

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000000381.

Rahim Rajabali Mardhani

... Complainant.

Versus

Mr. Dipesh/ Mukesh Bhagtani

JVPD Properties Pvt Ltd

... Respondents.

MahaRERA Regn: P51800011181.

Coram: Shri B.D. Kapadnis,
Member-II.

Appearance:

Complainant: Present in person.

Respondents: Adv. Mr. Alok Kumar Singh.


ORDER ON THE RECOVERY APPLICATION

02nd November, 2020

The complainant has filed applications reporting non-compliance of final order passed in the complaint. The respondents appear through Adv. Mr. Alok Singh to submit that the Economic Offence Wing of Mumbai is investigating the matter based upon the report filed against the respondents and police freeze their bank account. Therefore, the respondents are not able to comply with the order, unless and until the Hon'ble Bombay High Court de-freezes their account by passing an order to that effect in suit no. (L) 570 of 2018.

2. The reason assigned by the respondents does not appeal to me because the respondents had an opportunity to satisfy the claims of the complainants even before freezing their account. They have also other sources which they do not want to tap for compliance. Hence issue recovery warrant under section 40(1) of the RERA.

Date: 02.11.2020.


2.11.2020
(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC00600000000381

Rahim Rajabali Mardhani	Complainant.
V/s.		
JVPD Properties Pvt. Ltd.	Respondents.
MahaRERA Regn: -P51800011181		

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: in Person.

Respondents: ASD Asso. Advocates & Solicitors.

Final Order

23rd April 2018.

Complainant's case.

The complainant has filed complaint contending that he booked flat No.301, A-2 Wing in respondents' registered project Bhagtani Serenity situated at Village Tirandaz, Taluka Kurla, Mumbai.

2. Respondents issued the allotment letter contending therein that respondents shall complete the construction within the period of 42 months from the receipt of final commencement certificate from plinth level. The complainant complains that respondents have failed to bring the clearances within the period of 9 months + grace period of next 3 months from the date of booking and complete the construction till the date. Respondents by their letter dated 24th July 2017 showed their inability to complete the construction and give possession as agreed. Respondents, made themselves liable to refund all the amounts paid by the complainant



with interest and / or compensation under Section 12 of Real Estate (Regulation and Development) Act, 2016 (RERA). The Complainant complains that the respondents have not registered their project with MahaRERA. They collected booking amount of Rs.20,66,250/- without intending to construct a building and thus indulged in fraudulent act.

Defence of respondents:

3. The respondents have filed the reply to contend that the complainant is the investor and he is not allottee because in Para 11 & 18 of the provisional allotment letter he has admitted that he is investor. The provisional letter for booking is subject to approvals and permissions to be granted by various authorities for construction. It is a contingent contract and therefore it cannot be enforced as the approvals and permissions required for construction have not been granted. Section 12 of RERA is not retrospective. Hence they request to dismiss the complaint.

4. Following points arise for my determination and findings thereof are as under:

Points.	Findings.
1. Whether the complainant is investor?	Negative.
2. Whether MahaRERA has jurisdiction to adjudicate this complaint?	Affirmative.
3. Whether the respondents made false statement that they shall complete the project within reasonable time and subsequently declared that they would not complete it & thereby contravened section 12 of RERA?	Affirmative.
4. Whether the respondents have indulged in fraudulent act by taking booking amount without intention to construct a building?	Negative.
5. Whether the respondents have failed to register their project with MahaRERA?	Negative.



Reasons.

Point Nos. 1 & 2 -

5. The respondents have taken a stand that the complainant is the investor, therefore, he is not entitled to file the complaint under Section 31 of RERA. It is pertinent to note that any aggrieved person can file a complaint against the promoter of the registered project, if the promoter contravenes or violates any provisions of RERA or Rules or Regulations made thereunder. The learned Advocate of the respondents submits that the complainant did not insist on execution of agreement for sale only because, he is investor. I do not agree with him because he booked the Flat in the year 2014, the respondents themselves have contended that they received IOD on 06.04.2016. IOD was required for registration of the agreement. The respondents delayed the IOD and they avoided to execute the agreement for sale. They cannot take undue advantage of their own wrong to say that the complainant is investor. Moreover, when I look at the terms and conditions of the allotment letter, there remains no doubt in my mind that the complainant comes under the purview of 'allottee' defined by Section 2 (d) of RERA.

6. The respondents have not mentioned while uploading the information of their project on the official website of MahaRERA that the complainant is the investor or he has financed them. Section 4(2)(k) of RERA provides that the names and addresses of the contractors, architect, structural engineer, if any and any other person concerned with the development of the proposed project must be put on the website. Therefore, they are estopped from denying the complainant's status as home buyer.

7. All the terms and conditions of the allotment letter clearly indicate that the complainant agreed to purchase the flat for consideration to be



paid by them in instalments depending upon the stages of the construction and the last instalment payable was at the time of handing over the possession. It contains all necessary conditions of agreement of sale, it is signed by both the parties. So I treat it as concluded contract. Therefore, merely because it is mentioned in Clause 10 of the allotment letter that the complainant is investor that will not make him the investor in the real sense. A person who pays money to the promoter in anticipation of buying a flat, in fact, invests his money for house and therefore, Section 12 of RERA also refers to such amount as investment. Only because the complainant has deposited their amount with the respondents, it does not mean that he becomes the investor interested in earning profits. The respondents have not produced any evidence to prove that the complainant is in habit of investing his funds for earning profit. Therefore, I hold that in the facts and circumstances of the case, the complainant does not appear to be investor but he is allottee. Hence MahaRERA has jurisdiction to adjudicate upon this complaint.

Point No.3

8. Section 12 of RERA provides that where any person makes an advance or deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

9. Its proviso provides that if the person affected by such, incorrect, false statement intends to withdraw from the proposed project, he shall be returned his entire investment along with interest as may be prescribed and the compensation in the manner provided under RERA.

10. Section 71 of RERA provides for appointment of Adjudicating Office for adjudicating compensation under sections 12, 14, 18 & 19 of the Act.



The proviso of sub clause (1) of Section 71 provides that any person whose complaint in respect of matters covered under section 12, 14, 18 & 19 is pending before consumer disputes redressal forum or consumer disputes redressal commission or the National Consumer Redressal Commission on or before commencement of this Act (RERA) he may, with permission of such forum or commission as the case may be, withdraw the complaint pending before it and file an application before the Adjudicating Officer under this Act. In Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India (Writ Petition No.2737 of 2017, ordinary original Civil jurisdiction) the division bench of the Hon'ble Bombay High Court has dealt with this issue to hold that Section 12, 14, 18 & 19 of the Act are to be tried by the Adjudicating officer as per Section 71 and the parliament has power to legislate the law having retrospective or retroactive application. Therefore, these provisions have been held constitutional. After taking review of this legal provision, I find no force in the submission of Mr. Singh that Section 12 will not operate to the facts which occurred before RERA came into force.

11. The complainant has produced the advertisements, brochures and allotment letters issued by the respondents to show that when he deposited money with the respondents, he was made to believe that the respondents would complete the project within 42 months from the date of the receipt of final commencement certificate from plinth level. However, the respondents have issued a letter dated 24.7.2017 declaring that they would not proceed ahead with the project and asked the allottees either to collect their amount or to give consent for accommodating them in respondents another project. These facts based upon the documents issued by the respondents themselves have been established. These facts therefore prove that the respondents made either incorrect or false statement at the time of collecting money from the complainant that they would complete the project. Hence, the respondents are liable to refund the amount of



complainant with interest at prescribed rate as the very project is frustrated. The complainant has filed payment sheet marked exhibit-A showing the amount paid by him to the respondents and the dates thereof. The receipt of the payment mentioned therein has not been disputed.

12. Rule 18 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interests, penalty, compensation, fine payable, forms of complaint and appeal, etc.) Rules, 2017 provides that the interest shall be 2% above the SBI's highest marginal cost of lending rate which is currently 8.05%. Thus, the complainant is entitled to get the simple interest at the rate of 10.05% per annum from the date of payment till they are refunded. He is also entitled to get Rs. 20,000/- towards the cost of the complaint.

Point No. 4.

13. The aforesaid facts also clearly indicate that the respondents have collected money from the complainant by representing them that they would complete the project. Now by their letter dated 24.07.2017 they have expressed their inability to complete the project for the reasons mentioned in it. It is true that the respondents have obtained IOD in the year 2016 and other permissions /sanctions necessary for completion of the project have not been obtained by the respondents for the best reasons known to them. They have acquired the land for the project. After taking all these facts into consideration I find it difficult to infer that since beginning the respondents had intention of not constructing the project. Hence, for want of sufficient material/evidence I hold that the complainant has failed to prove this allegation.

Point No.5.

14. The complainant alleges that the respondents have not registered their project with MahaRERA. I have verified from the official website of




the Authority that the respondents have registered the entire building without mentioning its wings. Therefore, this allegation fails.

ORDER

1. The respondents shall refund the complainant's amount mentioned in payment sheet marked Exh. 'A' with simple interest at the rate of 10.05 % per annum from the dates of payment till they are refunded.
2. Payment sheet marked Exh. 'A' shall form the part of the order.
3. The respondents shall pay complainant Rs. 20,000/- towards the cost of complaint.
4. The charge of aforesaid amount shall be on the respondents' property under project bearing C.T.S. No. 63A/5 and 64D "S" ward of village Tirandaz, Taluka Kurla, Mumbai, till the complainant's claims are satisfied.

Mumbai.

Date: 23.04.2018.


(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

Complaint No. CC00600000000003

Exh. A
for
member. H

Payment Format

Sr.No.	Date	Amount	Purpose	Receipt No./Cheque No. with Bank Name
1	15/10/2014	700000/-	Purchase of Flat No A2/301 - Bhagwati Sreenith	CHEQUE # 237521 HDFC BANK LTD
2	24/10/2014	1366250/-	Purchase of Flat A2/301 - Bhagwati Sreenith	CHEQUE # 237522 HDFC BANK LTD
3	24/10/2014	63842/-	Service Tax on Flat A2/301 Bhagwati Sreenith	CHEQUE # 237523 HDFC BANK LTD
4			Paid to Builder only	
5				
6				
7				
8				
9				
10				

Complainant Name & Sign

RAHIM RAJABALI MARNHANI

Rahim

Respondents Remark-

Respondents name & Sign