

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO.CC006000000078849

Monika Agarwal,
Rajesh Agarwal

..Complainants.

Versus

Forum Homes Pvt. Ltd.

..Respondents.

MahaRERA Regn. No. P51800011662

Coram:

Hon'ble Shri Bhalchandra Kapadnis,
Member-II, MahaRERA.

Appearance:

Complainants: ABH law LLP.

Respondents: Dhaval Vusonji & Associates.

FINAL ORDER

(03.01.2020)

The complainants contend that they initially booked flat No. 8C and thereafter it has been changed to flat no. 16C situated in the respondents' registered project Serendipity situated at BKC, Mumbai.

2. The respondents issued an Allotment Letter dated 31.03.2015 contending therein that the unit shall be handed over within 36 months from the date of last approval or on or before 31.12.2017, whichever is later. The respondents have failed to hand over possession of the flat on agreed date. Therefore, the complainants withdraw from the project and seek refund of their amount with interest u/s 18 of RERA.

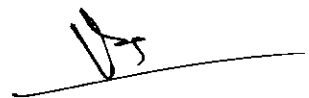
3. Respondents have pleaded not guilty. They have filed their reply to contend that while registering the project with MahaRERA, they have



specifically mentioned that it would be completed by 31.12.2019 and therefore, complaint is pre-mature. They further contend that in the Allotment Letter, it is mentioned that construction will be completed within 36 months from the date of last approval or on or before 31.12.2017, whichever is later. The Commencement Certificate for constructing the 20th floor of the building has been issued by SRA on 24.05.2019. Therefore, complaint is pre-mature. They further contend that complainants themselves avoided to execute agreement for sale as they wanted to change the flat no. 8C to 16C. They have not paid the revised cost, due to increase in floor rise. They also contend that this Authority has no jurisdiction because as per the Arbitration clause contained in the Allotment Letter, the matter needs to be referred to the Arbitrator.

4. Heard the learned advocates of the parties. There is no dispute between the parties that respondents have specifically mentioned in the Allotment Letter that they shall complete the unit within 36 months from the grant of last approval or on or before 31.12.2017 whichever is later. Now the respondents want to rely upon the Commencement Certificate given by SRA for constructing 20th floor and thereby they request to compute period of 36 months from grant of that Commencement Certificate dated 24.05.2019. It shows that last approval is received on 24.05.2019 from SRA for constructing 20th floor of the building Hence, I find that agreed date of possession has not been crossed in this case and the right to claim refund of amount has not yet accrued to the complainant u/s.18 of RERA. Therefore, complaint is not maintainable.

5. Other issues raised by the learned advocates of the respondents in fact are now redundant. I shall briefly refer to them. Respondents submitted that Section 18 of RERA provides that on failure of the promoter to complete or to give possession of an apartment in accordance with the



terms of the agreement of sale or duly completed by the date specified therein, the promoter shall be liable on demand to an allottee who wishes to withdraw from the project to return the amount received by him with interest and or compensation. Therefore, he submits that complainants have not issued demand notice prior to filing the complaint. For this, purpose, he relies upon N. L. Mehta Cinema Enterprises (P) Ltd. Vs. Pravinchandra P. Mehta MANU/MH/0106/1991. In the reported case, the Hon'ble High Court has referred to Section 434(1) of the Companies Act which reads as under:

"434(1) - A company shall be deemed to be unable to pay its debts - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor..."

6. On this premise, Hon'ble High Court has held that prior notice of demand is necessary. Section 18 of RERA simply refers to "On Demand". It does not refer to the issuance of notice to be delivered at the registered office of the company by registered post or otherwise a demand under allottees' hand requiring promoter to pay sum so due. So in view of this specific provision of section 434(1) of the Companies Act, prior notice in writing sent at the company's registered office by registered post is found necessary. This authority has already expressed its view that filing of complaint itself is a demand because the complaints are filed online and they can be viewed by the promoters at very same moment because they are generated on their webpage. Thereafter, matters are taken for appearance of the parties and hearing. The promoter gets knowledge/ notice of demand at the moment when complaint is filed. Hence, a separate

notice is not necessary and it is not pre-requisite for filing the complaint u/s 18 of RERA.

7. Learned Advocate has referred to Arbitration clause. This authority has already dealt with this aspect in Suresh Swami vs. L&T (CC006/57656).

The relevant observations are:


“So far as barring of the jurisdiction of this Authority in view of the Arbitration Clause contained in the agreement is concerned, I have already dealt with it while passing interim order dated 11th September 2018 in the case of Parth Bharath Suchak-v/s-M/s. Renaissance Infrastructure (CC006/54729) wherein this Authority has referred to HDFC Bank Ltd-v/s-Satpal Singh Baxi- MANU/DE/5308/2012 in which the Supreme Court also held that if particular enactment creates special rights and obligations and gives special power to the Tribunal which are not in Civil Court such as tribunal constituted under Rent Control Act and the Industrial Disputes Act, the dispute arising under the said enactments cannot be arbitral otherwise other disputes are arbitral. In Hemangi Enterprise-v/s-Kamaljeet Singh Ahluwalia 2017 STPL 13221 SC, the Supreme Court found that the dispute between the parties was that of the tenant and landlord relating to leave and license agreement and therefore exclusive jurisdiction to deal with such dispute is conferred upon the Court of Small Causes and therefore, though there was the Arbitral Clause in the agreement, the Court held that the dispute was not arbitral. I have recorded that the Real Estate Regulatory Authority established under Section 20 of RERA has special powers under Section 31 of it to adjudicate the dispute between the aggrieved person on one hand and the promoter, allottee, real estate agent on the other for violation or contravention of the provisions of RERA, Rules and Regulations made thereunder. Section 32, 34, 35 are the special



provisions. Section 79 of RERA bars the jurisdiction of Civil Court from entertaining any matter which the Authority is empowered under the Act to determine. Section 59 to 69 relate to the offences and penalties. Special Forum of Adjudicating Officer whose qualification is that of District Judge has been set up by Section 71 of RERA to decide the matters arising out of Section 12, 14, 18 & 19. This case arises out of Section 18 of the Act for which a separate special forum has been provided by RERA and hence, the jurisdiction lies with the Authority and it cannot be delegated to the Arbitrator despite the provisions of the Arbitration and Conciliation Act and the Arbitration Clause of the agreement. Hence, I do not find any force in the respondents' submission that this Authority has no jurisdiction. I find that the Authority has jurisdiction to entertain this complaint."

Therefore, these two issues will not help the respondents.
In result, complaint is dismissed.

Place : Mumbai
Date : 03.01.2020.


3.1.2020
(B.D.KAPADNIS)
MEMBER-II, MahaRERA, Mumbai.