

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

Complaint No.

Madhukar Ullal

..Complainant

Vs

M/s. Marvellous Builders Pvt. Ltd & 2 Ors

..Respondents

MahaRERA Project Registration No. **P51800003129**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member - 1/MahaRERA

Adv. Dhananjay Halwai appeared for the complainant

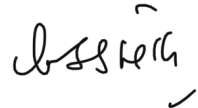
Adv. Rushabh Savla appeared for respondent

INTERIM ORDER

(12th November, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent not to grant any further commencement certificate with respect to the project registered by the respondents without assuring the entitlement of the complainant's flat under section 7(1)(C) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as RERA) in the proposed new building in the present project registered by the respondent known as "**Marvel Pride**" bearing MahaRERA registration no. **P51800003129** at Vile Parle East Mumbai.
2. This complaint was heard on 5/11/2018, 7/12/2018 and 14/10/2019 and same was heard on 18/11/2019. However, on 14/10/2019 and 18/11/2019 the complainant though has been issued notices for the said hearings remained absent and hence an order was passed on 18.11.2019 by MahaRERA whereby this complaint was dismissed for want of prosecution. Thereafter, the complainant moved an application for

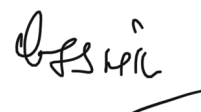


restoration of this complaint and for setting aside the said order dated 18th November 2019. The said application was allowed and this complaint was again kept for hearing.

3. Thereafter this complaint was heard on several occasions in presence of the concerned parties and same was heard finally on 28/09/2020 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 upload their written submissions on the record of MahaRERA, if any. On the last date of hearing i.e. 28/9/2020 the complainant remained absent. However, the respondent no.2 was present. Hence, after hearing the arguments of the respondents, one week time was granted to both the parties to file written submissions on record of MahaRERA. Accordingly, the complainant has filed his written submission on record of MahaRERA on 27/10/2020. The said written submission is taken on record in compliance of principles of natural justice.
4. It is the case of the complainant that by virtue of Deed of conveyance dated 7/9/1994 executed by one Mr. Joe Thomas D'Souza and Ms. Liza D'Souza the complainant acquired 1 ½ of the ownership rights in respect of 8 plots of land including F.P. 348. However, before registration of the said Conveyance Deed Mr. Joe D'Souza expired and hence Ms. Liza D'Souza became the absolute owner of the said land. Thereafter, the complainant had filed suit no. 3757 of 1998 before the Hon'ble High Court of Judicature of Bombay to declare his 1 ½ undivided share in 8 immovable properties including the F.P. No. 348 by joining the legal heirs of late Mr. Joe D'Souza and Ms. Liza D'Souza. In the said suit, the Hon'ble High Court was pleased to pass on 29/8/2002 in Notice of Motion no. 2684 of 1998 by observing that the 1 ½ right of the complainant in

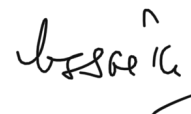


the said property and thereby defendant no.14 namely BMC who had acquired land for road purposes was restrained by an order of injunction from creating any third party right with respect to the said property bearing F.P. No. 348. Subsequently, in the said suit, settlement was arrived at between the parties i.e. the complainant and the other owners of the said property. During the pendency of the said suit the respondent no.1 viz. Marvel Developers acquired the part rights in the said property bearing F.P. No. 348 from defendant nos.1 to 10 and 11 by executing the Conveyance Deed dated 6/4/2002, 26/4/2002, 6/5/2002, 7/5/2002 and 9/5/2002. The respondent no.1 also approached the complainant to have the complete rights including the 1 ½ right of the complainant in F.P. No. 348 and executed agreement dated 14/8/2003. As per clause no. 6 of the said agreement in lieu of complainant's 1 ½ share in the said property, the respondent no.1 agreed to pay to the complainant an amount of Rs.2,50,000/- and further agreed to give one flat in the building proposed to be developed on the said plot of land bearing F.P. No. 348. Accordingly, the parties filed consent terms before the Hon'ble High Court in suit no. 3757 of 1998 on 29/4/2004. Thereafter, the respondent no.1 filed an application before the competent authority for necessary permission in the year 2010 and obtained the IOD on 29/10/2010. However, till date the respondent no.1 has failed to comply with clause no.6 of the said agreement though the 4th floor of the said building is completed on site. The complainant further stated that due to such non performance on the part of respondent no.1, he has sent several legal notices to the respondent nos. 1 and 2 which were never replied by them. Further, by violating the provisions of section 15 of the RERA, the respondent no.1 sublet the development right to respondent no.2 vide development agreement dated 16/9/2011 without any notice to the complainant and thereafter again transferred the project to respondent no.3 through the respondent no.2 vide agreement dated 12/2/2018. In the said development



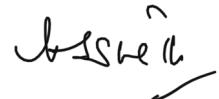
agreement dated 12/2/2018 annexure 'A' shows the flat no.401 which was allotted to the complainant was earmarked to the respondent no.1. The complainant further stated that the respondent no.1 has not disclosed the suit no. 3757 of 1998 on the MahaRERA website. Further, the respondents deliberately did not file any reply on the record of MahaRERA and hence denied each and every contentions raised by the respondent in the said reply. The complainant further stated that is claims towards flat no. 401 adm. 700 sq.ft. be granted.

5. The respondent no.1 on the other hand has resisted the claim of the complainant by filing reply as well as written submissions on record of MahaRERA on 26/9/2020 and 5/10/2020. In the said reply, the respondent no.1 has denied all the allegations and averments made by the complainant and prayed for dismissal of this complaint on the ground that the complainant has not disclosed all material facts to MahaRERA while filing this complainant. The respondent further stated that the complaint is filed just to extort money from the respondent and there is no cause of action that has arisen to file this complaint. The respondent no.1 further stated that it is a registered company who acquired ownership right from the original owner by executing the conveyance deeds dated 6/4/2002, 26/4/2002, 6/5/2002, 7/5/2002 and 9/5/2002. Later it was brought to its notice that the complainant is also claiming interest in the said plot and filed suit before the Hon'ble High Court bearing suit no. 3757 of 1998 claiming 1 ½ share in the said property and it also came to know that the complainant had obtained injunction order dated 29/8/2002 in Notice of Motion no. 2684 of 1998 filed in the said suit. The respondent no.1 stated that the complainant got the said order by misrepresentation and the respondent never recognized 1 ½ share of the complainant in the said plot. Due to the said injunction order, it could not start the construction work on site and therefore to expedite



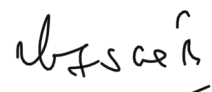
the development of the said plot, the respondent no.1 agreed to enter into settlement terms with the complainant vide agreement dated 14/8/2003 wherein the complainant agreed to confirm that he shall have no claim / rights in the said property and he further undertook in clause no.2 of the said agreement to withdraw the said order dated 29/8/2002 passed by the Hon'ble High Court. Based on the said submission, the respondent no.1 paid an amount of Rs.2,50,000/- to the complainant and it has further agreed to allot the flat to the complainant in the new building. However, the complainant failed to take further steps within a period of 15 days to withdraw the said order of injunction from the Hon'ble High Court. Thereafter, the respondent no.1 alongwith the complainant and other owners filed consent terms on record of Hon'ble High Court by filing Notice of motion no. 120 of 2004 and got the said injunction order vacated.

6. Thereafter, it has come to know that the complainant never had a clear title with respect to the said land and he fraudulently obtained the said injunction order and therefore it asked the complainant to refund the money to him and also informed him that he is not entitled to any flat as mentioned in the agreement dated 14/8/2003. The respondent further mentioned that thereafter the complainant again approached the Hon'ble High Court of judicature at Bombay seeking injunction against it and the other defendants by filing Notice of Motion no. 2960 of 2005. The said Notice of Motion was dismissed by the Hon'ble High Court on 12/6/2007 and the cost was levied to the complainant. In the said order, the Hon'ble High Court observed that the complainant is guilty of suppressing the relevant facts. The complainant thereafter challenged the said order by filing Appeal no. 389 of 2008 which has also been dismissed on 6/10/2008. These orders have not been disclosed by the complainant while filing this complaint on the record of MahaRERA. The



respondent further stated that the agreement dated 14/8/2003 was void ab initio since the complainant never had a clear title over the said property and the complainant has played fraud upon it and therefore the respondent no.1 signed such an illegal agreement. The respondent therefore prayed for dismissal of this complaint.

7. The MahaRERA has examined the arguments advanced by both the parties as well as written submissions made by both the parties. In the present case, the complainant by filing this complaint is seeking relief against the agreement dated 14/8/2003 executed between the erstwhile developer namely Marvellous Builders Pvt. Ltd. and the complainant. Further, in the prayer clause the complainant has mainly stated that no further permission be issued until his grievance is redressed and the said relief is sought under section 7(1) (C) of the RERA. On perusal of the submissions made by the complainant in his complaint, the MahaRERA has prima facie observed that the complainant is seeking specific performance of the agreement dated 14/8/2003 executed between the respondent no.1 and the complainant whereby the respondent no.1 agreed to pay certain amount to the complainant and also to allot one flat in the newly constructed building. The complainant has alleged that the respondent no.1 though agreed to allot one flat on 4th floor to him, till date it has not been allotted. However, the respondents have stated that the complainant never had any right or title in respect of the said plot bearing F.P. No. 348 on which the project has been sanctioned and the agreement dated 14/8/2003, become void ab initio and hence the same cannot be performed by the respondent no.1.
8. In the present case, the complainant claiming to be the co-owner of the plot of land bearing F.P No. 348 has approach MahaRERA seeking allotment of flat as per the agreement dated 14-08-2003 executed between him and the respondent No. 1. The complainant ultimately, by



filing this complaint is seeking specific performance of the agreement dated 14/8/2003 executed between the complainant and the respondent no.1. In this regard, the MahaRERA is of the view that the MahaRERA has no jurisdiction to try and entertain such a dispute which is civil in nature. Moreover, the MahaRERA has also observed that the complainant has neither produced any allotment letter issued by the respondent no.1 nor any agreement for sale entered into between the respondent no.1 and the complainant to establish the fact that he is an allottee in the project registered by the respondent and the MahaRERA cannot entertain such a dispute brought by the complainant which is of a civil nature. Further the complainant has produced any cogent documentary proof on record of MahaRERA to show that the respondents have done any act which amount to unfair trade practise as contemplated under section 7(1) (C) of the RERA. Hence the claim of the complainant sought under the said aforesaid provision of RERA can not be accepted.

9. In view of the aforesaid facts, the MahaRERA can't take any action in this case and hence the complaint filed by the complainant stands dismissed for want of jurisdiction.



(Dr. Vijay Satbir Singh)
Member - 1/MahaRERA