

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

COMPLAINT NO: CC005000000011519

Mr. Niranjan Dashpute
Mr. Dattatray Ramdas Dashpute] ... Complainants.

Versus

Mr. RajKumar Nivrutti Saste,
Mr. Sanjay Nivrutti Saste,
Mr. Vijay Nivrutti Saste ... Respondents.

MahaRERA Regn: P52100011757
(Nivrutti Heights)

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

Appearance:

Complainants: Mr. Niranjan Dashpute.
Respondents: Adv. Adv Akshay Tapkire
For R.1
Adv. Mr. Dudhat for
Nos. 3, 10 and 11

FINAL ORDER

08th July, 2020

The complainants have been seeking preventive injunction against the respondents who are the land owners of the 20 Are land out of block No. 36 and 7 Are land out of block No. 37 of village Moshi to restrain them from causing obstruction to them from completing the project 'Nivrutti Heights' on the said lands.

2. The complainants contend that the respondents are the land owners of the aforesaid lands. They entered into development agreement with the respondents for developing the said lands and respondents gave them



irrevocable power of attorney for developing the lands and for constructing their project 'Nivrutti Heights' on area sharing basis. The agreement has been executed on 09th July 2012. The area sharing is 26,500 sq. ft. residential area and 1,480 sq. ft. commercial area namely the shops. The possession was to be given within 36 months of the agreement. It appears that some TDR was to be acquired for making additional construction, however, that could not work out and therefore the additional construction could not be made. Hence the parties had some disputes. Ultimately, the supplementary agreement has been executed between them on 31st October, 2018 to resolve the issue. Complainants agreed to give the possession of their build-up area on 25th January 2019. It is the grievance of the complainants that the respondents are obstructing them from completing the project and from fitting the fire safety system therein because of which the occupancy certificate/ the completion certificate, has not been granted by the planning authority. The complainants request to prevent the respondents from causing obstruction in completing the project and from installing fire system.

3. The respondents have filed their replies. They have contended that the complainants have failed to mark and allot them parking space as was agreed between them. They have failed to transfer the title of the units and shops allotted to them. The additional TDR acquired by the complainants has not been transferred to the respondent No. 1. They further contend that the material used for making the construction is sub-standard and there are many defects in the construction like cracks in walls, water leakages in walls and roofs. Therefore, they have issued legal notice on 23rd May 2018 and public notice on 24th May 2018 contending therein that the complainants are not capable of completing the project and to perform their part of contract as the promoters. Therefore, they sought to cancel the



development agreement and irrevocable power of attorney given to complainants. They contend that in the letter dated 10th June 2019 they have informed the complainants about the defects but the complainants have not removed them. The respondents further contend that 45 families are staying in the building but agreed amenities have not been provided. According to them, the complainants being the promoters of the project are not aggrieved persons and they cannot file the complaint under the provisions of the Real Estate (Regulation and Development) Act 2016 (for short, RERA). Therefore, this Authority has no jurisdiction to decide this complaint. Hence, they request to dismiss the complaint.

4. I have heard the complainants and the Ld. Advocate of the respondent No. 1 Mr. Tapkire on virtual platform. The Ld. Advocate of the respondent Nos. 3, 10 and 11 has submitted the written notes of the argument. I have gone through the documents placed on record by the parties.

5. The first issue raised by the respondents is that the complaint is not maintainable because the complainants are not the aggrieved persons for filing the complaint under Section 31 of the RERA. The facts to which I have referred to above are sufficient to indicate that the complainants are the promoters and the respondents are the land owners who have given their land to the complainants for development and for making the construction of the project on area sharing basis. Therefore, strictly speaking both the complainants and the respondents are the promoters as defined by Section 2 (z) (k) of the RERA. It appears that, the respondents are not happy with the performance of the complainants and they have certain issues regarding the quality of construction as well as there are some disputes relating to money matters, be that as it may, but the submissions of the both the parties and the contents of their documents are



sufficient to realise that the dispute is going on between the two parties. It has been argued by Mr. Tapkire on the basis of the points raised by the respondents in their reply, that the respondents want that the project should be completed as per the sanctioned plan, all the agreed amenities should be provided to the respondents and the monetary matters should be taken care of. It is their apprehension that the complainants are in hurry of obtaining the completion certificate/the occupancy certificate and they want to get the rid of the project without completing the project in the manner in which it is to be completed. This is the crux of the matter. After giving thought to the facts and circumstances of the case, I find that in addition to built-up area to be allotted to the respondents the complainants have agreed to sell the remaining units to other allottees who have paid for them. Some of them have obtained orders from this Authority directing the complainants to pay interest on their investments for delayed possession. Almost 62 flats are constructed and according to the complainants, only 1% of construction work has remained to be completed. I have been told that the possession of the area to be allotted to the respondents has already been taken by the respondents and therefore now they are obstructing the completion of the project by putting the complainants and other allottees who have paid their valuable consideration to ransom. I have been told that 45 families have already moved in the building which is not yet completely constructed and which is not safe to live in the absence of fire safety system. Respondents cannot be permitted to put the lives of others in danger for their own sake/benefit.

6. Now I shall deal with the legal aspect of the matter to decide the issue of maintainability of the complaint. When one peruses the provisions of RERA one finds that Section 14 (1) of the RERA casts the duty on the promoter to complete the project in accordance with the sanctioned plan.



Section 11 (4) (b) of RERA provides that the promoter shall be responsible to obtain the completion certificate or the occupancy certificate or both. Similarly, the allottee has the right to claim possession under Section 19 (3) of the RERA. This right of the allottee casts obligation on the promoter to construct the project as per the sanctioned plan and to handover possession of the unit to the allottee, otherwise he has to pay interest on the allottee's investment under Section 18 (1). Section 14 (3) of the said Act imposes the duty on the promoter for removal of the structural defects on his own cost within the period of 5 years of the completion of the project. So these provisions are sufficient to indicate that the promoters namely the complainants in this case are under the legal and contractual obligation to complete the project and to handover the possession of the units to the allottees by obtaining occupancy certificate. I find, when the respondents have been obstructing the complainants from discharging their legal and contractual obligations for serving their own selfish motives, respondents are acting contrary to these provisions. I hold that because of contravention of these provisions of RERA, not only the complainants are affected but other allottees are also affected and they have sustained legal injury. Hence the complainants are entitled to file the complaint under Section 31 of the RERA they being aggrieved persons.

7. After giving thought to the facts and circumstances of the case, I find that it is the duty cast upon the promoters and in another sense the same duty is also cast upon the land owners they being the co-promoters also to complete the project and to hand over the units to allottees in time. The internal fight of parties is affecting the rights of the flat purchasers and therefore I find that the facts are clear to establish that the respondents are causing obstruction in completing the project, in installing the fire safety systems in the project and in obtaining the occupancy certificate or the



completion certificate from the sanctioning authority. Section 34(f) of RERA casts duty on this Authority to ensure the compliance of its provisions and section 37 of it empowers the Authority to pass orders including that of injunction whenever needed. So, for these reasons, I hold that the complaint is maintainable and the complainants are entitled to the relief of injunction.

8. It is the desire of the respondents that the complainants should comply with the terms and conditions of the supplementary agreement and provide agreed amenities. I feel that this expectation is also not wrong hence it is the duty of the complainants to see that the project is completed as per the sanctioned plan. The complainants will have to provide the amenities which they have agreed upon and if the directions to this effect are given to the complainants, I think that it will end the dispute.

9. The respondents themselves have contended that 45 families have been residing in the different units of the project that too without obtaining the occupancy certificate or the completion certificate issued by the competent authority. Section 3 (2) (i) of Maharashtra Ownership of Flats Act 1963 prohibits the promoter from inducting any person without completion certificate into the flats and it also prohibits the buyer from entering into possession of such flat without the occupancy certificate or the completion certificate. Maharashtra Municipal Corporation Act prohibits the occupation of the building without occupancy or completion certificate and it is an offence. Bombay High Court in M/s. Sion Kamgar Co-operative Housing Society Ltd. v/s. Municipal Corporation of Greater Mumbai in writ petition No. 829 of 2013 held that occupying the building without occupancy certificate cannot be permitted in law. The promoter and the occupants have to be proceeded against by the Municipal Corporation under the Maharashtra Municipal Corporation Act. In view



of this legal position, I find that it is necessary for this Authority as a regulator to prosecute the complainants, the respondents and all those occupants who have occupied the premises without occupation certificate and therefore it is necessary to refer the issue to Municipal Commissioner for taking action in accordance with the law. Therefore, I proceed to pass the following order:

ORDER

The respondents or anybody acting on their behalf are hereby restrained from preventing/obstructing the complainants, their servants or labourers from completing the project 'Nivrutti Heights' in accordance with the sanctioned plan and its specification.


The respondents or anybody acting on their behalf are hereby restrained from preventing/obstructing the complainants, their servants or labourers from installing fire safety system in the project and in obtaining completion/occupancy certificate of the project.

The complainants are directed to complete the project at the earliest as per the sanctioned plan and its specification. They shall also provide the agreed amenities and shall also remove the defects which have been pointed out by the respondents in their letter dated 10th June 2019.

The secretary of the Authority shall bring the matter to the notice of learned Municipal Commissioner, Pimpri Chinchwad, for taking legal action against the offenders according to law.

The parties shall bear their own cost.

Date: 08.07.2020.


8.7.2020
(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.