

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

Complaint No. CC005000000022181

Bijay Kumar Singh

.... Complainant

Versus

Mr. Hanumant Arjun Harpale & Ors.

.... Respondents

Project Registration No. P52100014248

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

Complainant appeared in person

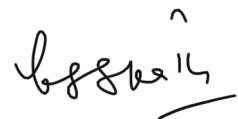
None appeared for the Respondent.

ORDER

(20th July, 2020)

(Through video conferencing)

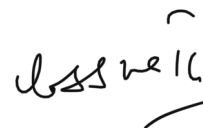
1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent / promoter to hand over possession of the flat to the respondent under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA), in respect of flat no. 104 in the respondents' project known as "Kala Gold" bearing MahaRERA registration No. P52100014248 situated at Pune.
2. This complaint was heard on 20/01/2019, 30/10/2019 and 06/12/2019. On all three occasions since the complainant remained absent, the MahaRERA passed an order on 6th December, 2019 and dismissed the said complaint for want of prosecution. Thereafter, the complainant filed an application for restoration of the said complaint stating that since he is working in the military and when the order was passed, he was unable to



attend the same since he was on duty. Therefore, in compliance of the principles of natural justice, his complaint was again placed for hearing.

3. This complaint was heard on 2nd July, 2020 and 13th July, 2020 as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through video conferencing. The parties were issued prior intimation of the hearings. Accordingly, both the parties filed their written submissions on record. However, during the course of both the hearings, though notices were duly served upon the respondents, they failed to appear for the hearings. Hence in compliance of principles of natural justice, this matter was again adjourned today for final hearing. During the course of hearing, the complainant appeared and made his submissions. However, even today the respondents failed to appear for the hearing. Hence the MahaRERA has perused the written submission filed on record by the respondent.

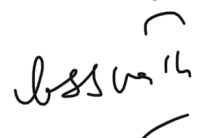
4. It is the case of the complainant that he has purchased the said flat no. 103 in the respondents' project for total consideration amount of Rs.30 lakhs. The agreement was executed on 10th July, 2017. At that time he had paid an amount of Rs.10 lakhs. He also borrowed home loan of Rs.10 lakhs and a total amount of Rs.20 lakhs out of Rs.30 lakhs has been disbursed to the respondents. The said flat was mortgaged vide file no. 8091 / 2018 dated 20th April, 2018. Thereafter the respondents sold the said flat to one Mr. Sampatlal Nishad for an amount of Rs. 33.50 lakhs in the month of January, 2018 to get more profit. Thereafter the respondents executed another agreement for sale for flat No. 103 on



wherein the date of possession was mentioned as 1st February, 2019. However, till date the possession has not been handed over to him. Hence the present complaint has been filed. With regard to the submissions made by the respondents, the complainant has stated that as per the terms and conditions of the agreement for sale he is liable to pay an amount of Rs. 10,00,000/- towards the balance payment, however the respondents are illegally demanding additional money which he is not liable to pay.

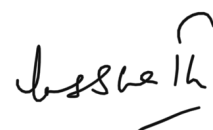
5. The respondents disputed the claim of the complainant by fling written submission on the record of MahaRERA and stated that initially the complainant has purchased flat No. 103 in the project and the agreement for sale was also executed on 10-07-2017. However, in the said agreement due to inadvertence of the advocate the flat number was wrongly mentioned as flat No. 104 instead of flat No. 103. The said flat No. 103 is ready with occupancy certificate since last 2 years. However, the complainant has not paid the outstanding dues as per the terms and conditions of the agreement for sale and as on date an amount of Rs. 14,97,000/- (Rs. 12,00,000/- towards cost of the flat, Rs. 1,97,000/- towards stamp duty and registration charges and Rs. 40,000/- towards the additional work carried out in flat) is due and payable by the complainant on payment of which, the possession will be handed over to the complainant.

6. The MahaRERA has examined the submissions made by both the parties as well as the record. In the present case by filing this complaint, the



complainant is seeking possession of flat No. 104 in the respondent's project registered with MahaRERA. However, the respondents have also shown their willingness to hand over possession of flat No. 103 which is ready with occupancy certificate subject to payment of Rs. 14,97,000/- . On perusal of the documents submitted on record, prima facie it appears that there are two agreements for sale executed between the complainant and the respondent on 10/07/2017 and 9/01/2019. The earlier agreement was executed for flat No. 104 and subsequently another agreement was executed for flat No. 103 which has been duly signed by both the parties. Hence the MahaRERA feels that though the complainant is claiming possession of flat No. 104 as per the earlier agreement signed on 10/07/2017, the second agreement executed on 9/01/2019 supersedes the earlier agreement and both the parties are liable to comply with the terms and conditions of the same. Therefore the MahaRERA feels that the respondent will have to hand over possession of flat No. 103 to the complainant and the complainant is also liable to make payment of outstanding dues as per the said agreement.

7. With regard to the outstanding demand raised by the respondent, the MahaRERA has perused the agreement for sale dated 9-10-2019 submitted on record, wherein the cost of the said flat is mentioned as Rs. 30,00,000/- and admittedly an amount of Rs. 20,00,000/- has already been paid to the respondent. Now the respondent is claiming an amount of Rs. 1,97,000/- towards the stamp duty and registration charges from the complainant, which the complainant is not liable to pay. If the flat number was wrongly mentioned in the agreement due to the inadvertence of the respondent's advocate, the respondent could

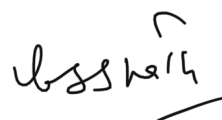


have executed rectification deed to correct the said mistake. Hence for the fault of the respondent itself, the complainant cannot be held responsible. Hence the MahaRERA feels that the respondent cannot raise the demand for payment of stamp duty and registration charges again from the complainant.

8. In the present case, the MahaRERA has also observed that in the agreement for sale executed on 9th January, 2019, the respondent has agreed to handover possession of flat to the complainant on or before 1st February, 2019. However till date the possession has not been handed over to the complainant, though the completion certificate has been obtained in the month of September, 2019. The MahaRERA therefore feels that the respondent has violated the provision of section 18 of the RERA and hence is liable to pay interest for the delayed possession as prescribed under section 18 of the RERA from the agreed date of possession mentioned in the agreement till the date of completion certificate.

9. In view of the aforesaid facts and circumstances of this case, the following order is passed:

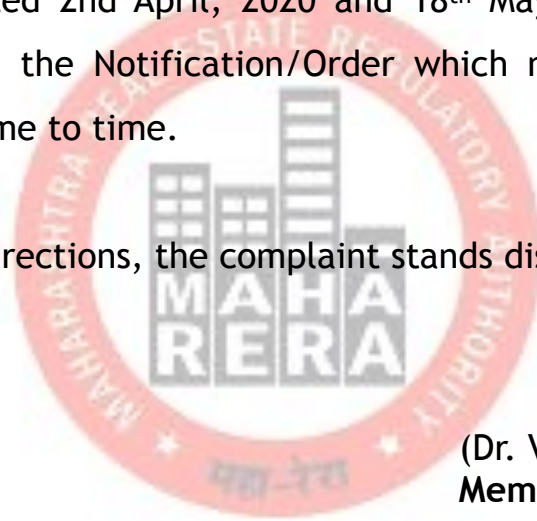
- a) The respondent is directed to handover possession of flat No. 103 to the complainant on payment of outstanding dues strictly as per the terms and condition of the agreement for sale executed on 9th January, 2019.
- b) The respondent is also directed to pay interest to the complainant from the agreed date of possession mentioned in the agreement for sale dated 9th January, 2019 till the date of completion certificate on the money paid by the complainant at the Marginal Cost Lending Rate (MCLR) of the State Bank of India (SBI) plus 2 % as



prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.

- c) With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent is entitled to set off the said interest amount with the outstanding dues payable by the complainant.
- d) The respondent is also entitled to claim the benefit of “moratorium period” as allowed in the Notifications /Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

10. With the above directions, the complaint stands disposed of.



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