

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO. CC005000000022081

Mr. Rajendra Brijkishor Jaiswal (HUF)

through Karta Mr. Rajendra Brijkishor Jaiswal

... Complainant

Versus

Marvel Omega Builders Pvt Ltd

MahaRERA Regn. No. P52100003648

... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Ulhas Kavishwar, Adv. and Mr. Narendrakumar Parvani, Adv.

Respondent was represented by Mr. D. Karthick, Authorised representative.

Order

February 24, 2020

1. The Complainant has stated that he has booked an apartment bearing no. 502 in Wing D (hereinafter referred to as the *said apartment*), via an Article of Agreement dated March 02, 2013, in the Respondent's project "Marvel Selva Ridge A, B Building" situated at Haveli, Pune. He further stated that pursuant to the said agreement the Respondent was under the obligation to deliver the possession of the said apartment by December 31, 2014, along with Occupancy Certificate, but has failed to do so in the stipulated time period. He further alleged that the Respondent has intentionally not registered wings C and D, in the same project layout, for which although the Respondent is under the obligation to register it, but he has failed to do so. Therefore, the Complainant has interalia prayed to direct the Respondent to handover possession of the said apartment at the earliest, along with



interest for delay in handing over the same, under the relevant provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*).

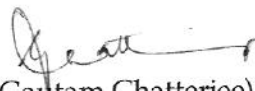
2. The authorised representative of the Respondent submitted that the Complainant is not an allottee in this project registered with MahaRERA comprising wings A and B. Moreover, it was his argument that wings C and D, having been completed along with Occupancy Certificate before the said Act came into force, does not require registration. He further submitted that possession for the said apartment has been already offered to the Complainant.
3. During the course of the hearing, it was explained to the Complainant that the complaint has been filed against a registered project in which he is not an allottee.
4. In accordance with the provisions of Section 3 of the said Act, the promoters are under obligation not to advertise, market, book or offer for sale or invite in any manner apartment or building, as the case may be without registering the Real Estate Project with the Real Estate Regulatory Authority under the provisions of the said Act.

Provided that projects that are ongoing on the date of commencement of the said Act and for which completion certificate has not been issued, promoter shall make application for registration within a period of three months from the date of commencement of the said Act.

5. As per section 4 of the said Act, it is obligatory on the part of the promoter to make an application to the Authority for registration of the Real Estate Project in such a manner and within such time and accompanied by such fee as may be specified by the regulations made by the Authority. As per Section 4(2) (D) of the said Act, it is obligatory on the part of the promoter to declare the time period within which he undertakes to complete the project. As per Section 4(2) (D) of the said Act, it is obligatory on the part of promoter to maintain separate account and deposit 70% of the amount realized for the Real Estate Project from the allottees from time to time. The said amounts to be utilized to cover the cost of construction and land cost and shall be used for that purpose only and the promoter is entitled to withdraw said amount in proportion to the percentage of completion of the project. Only after compliance of provisions of Section 4(2) of the said Act, the promoter is entitled for registration on the terms and conditions prescribed by the Authority.



6. This provision of Section 3 of the said Act has to be read along with Section 4 and Section 5(3) of the said Act which states that registration granted shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of Section 4 for completion of the project or phase thereof, as the case may be. If before filing an application for registration, a project has been completed, neither Section 4 (2) (for making application for registration) nor Section 5 (3) (for granting registration) can be complied with.
7. From the above, it is clear that the Promoter has completed the real estate project, comprising wings C and D, by completing the construction and development works as mandated by the competent planning authority prior to the commencement of the said Act, handed over the apartments to the allottees and thereafter has also obtained OC. Consequently, the real estate project has ceased to be a project and has become an occupied building. Therefore, no directions can be issued to the Respondent to register the said occupied building, comprising wings C and D, as an ongoing project, as per the relevant provisions of the said Act.
8. It was also explained that as stated in Para 86 of the judgement of Hon'ble Bombay High Court in *Writ Petition No. 2737/- U Neelkamal Realtors. Vs. Union of India*, RERA will apply after getting the project registered. Therefore, merits of the other grievances made by the Complainant have not been gone into. The Complainant has the liberty to raise the same in an appropriate forum.
9. In view of the above facts, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA