

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000056921

Sanjay P Kadam

Seema Sanjay Kadam

... Complainants

Versus

Patel Group and Co.

MahaRERA project Regn. No. P51700008709

... Respondent

Coram: Shri Gautam Chatterjee, Chairperson, MahaRERA

No one appeared on behalf of the parties on the date of final hearing on November 5, 2020.

Order

November 6, 2020

1. The Complainants have stated that they have purchased an apartment bearing no: in the Respondent's project 'Patel Colossus Phase 2' situated at Kalyan, Thane via registered agreement for sale (*hereinafter referred to as the said agreement*) dated September 23, 2018. The Complainants have alleged that the date of possession to hand over possession of the apartment as stipulated by the said agreement mentioned was on or before December 2017, but the Respondent has failed to do so, till date. Therefore, the Complainants prayed that since the Respondent has failed to hand over the possession of the apartments within the given period, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*), they be directed to pay interest, on delay, until actual delivery of possession of the said apartment.
2. In previous complaints filed against the said project, the learned counsel for the Respondent had submitted that the project could not be completed and is presently stand still, for various

reasons beyond the Respondent's control. Specifically, he submitted that there was a stay order passed in a public interest litigation filed in the Honourable Bombay High Court restricting any kind of construction and the said stay order was vacated in 2017. Thereafter, though the Planning Authority had given the commencement certificate and the Respondent is in a position to handover possession of the apartment by June 30, 2021. However, he further submitted, via an order dated October 25, 2018, the Honourable Bombay High court has appointed a Court Receiver across the entire layout, including this project, against an arbitration petition filed by the land lessee society 'L.I.G. 1 Konkan Vasahat Co-op. Hsg. Soc. Ltd.' (hereinafter referred to as the said Society) on account of unpaid dues. MHADA is the owner of the land which is on long lease to the said society. This had restricted the Respondent to deal with the project in entirety. The Respondent via an email stated that the project land is still not vacated from the Court Receiver's control. During the course of the said hearings, the Complainants brought to the attention of the MahaRERA Authority that in a certain matter related to this project, the Honourable High Court has passed an order directing the Respondent to hand over the project back to the said Society.

3. Section 15 of the Real Estate (Regulation and Development) Act, 2016 reads as thus:

*15. (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:*

*Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.*

*Explanation. – For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.*

*(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:*

*Provided that any transfer or assignment permitted under provisions of this section*


*shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.*

In view of the provisions of section 15 of the said Act, vide Order dated April 1, 2019 (hereinafter referred to as the *said Order*), it was held that the Complainants' right as allottees in the said MahaRERA registered project shall continue even after such change of promoter and the status of the Complainants, as allottees, post such transfer shall remain unaltered. Further, in the earlier complaints, the Respondent was directed to handover the list of allottees of the said project, along with their contact details, to the Complainants within 30 days from the date of the said Order, to enable the allottees to take an informed decision pertaining to the said project and if the association of allottees may like to proceed with revocation of registration under Section 7 of the Act. The Respondent vide email dated April 12, 2019 stated that the Respondent is in the process of filing a review application/appeal against the said Orders before MahaRERA/ Hon'ble Maharashtra Real Estate Appellate Tribunal (MahaREAT). In the said application, the Respondent has requested that the implementation of the said Orders be stayed until the review/appeal period is over. Accordingly, vide Order dated April 16, 2019, the implementation of the said Order was stayed till any appeal is filed before the Hon'ble MahaREAT in this matter or the expiry of 60 days from the date of the said order, whichever is earlier.

It is observed that the Respondent has neither filed any review application nor preferred an appeal against the said Order. Therefore, ipso facto the stay is hereby vacated

4. The observations made and the directions passed in the said Order as per para 3 above are reiterated in the present Complaint as well.
5. Consequently, the matter is hereby disposed of.

**Gautam  
Chatterjee**

 Digitally signed by Gautam  
Chatterjee  
Date: 2020.11.06 12:06:53 +05'30'

(Gautam Chatterjee)  
Chairperson, MahaRERA