

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

Complaint No. CC005000000054007

Mrs. Archana Singh

..Complainant

Vs

Mr. Nilesh Patil

..Respondent

MahaRERA Project Registration No. **P52100011149**

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

Complainant appeared in person.

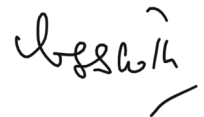
Adv. Nilesh Borate appeared for the respondent.

ORDER

(2nd December, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to pay interest and compensation for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect of booking of a flat in the respondent's registered project known as "Shruti Icon" bearing MahaRERA registration No. **P52100011149** at Pune.
2. This complaint was heard on 26-11-2020 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 file their written submissions, if any. Accordingly both the parties appeared for the hearing and made their oral as well as written submissions. After hearing the matter at length the respondent was directed to upload his reply on record of MahaRERA on that date.



Accordingly, the respondent has filed its reply and the same is taken on record.

3. It is the case of the complainant that she had earlier filed complaint no. CC005000000022010 before MahaRERA in the month of September 2018. In the said complaint settlement was arrived at between both the parties and accordingly consent terms were filed on record of MahaRERA and accordingly the said complaint was disposed of by MahaRERA vide an order dated 24.05.2019. As per the said consent terms, the respondent had agreed to pay compensation for the delayed possession from July 2014 till the actual date of possession at the interest rate of 10% p.a. and he has also agreed to provide possession within the period of three months from May 2019. Accordingly, the respondent has paid an amount of Rs. 3,00,000/- to her in the month of September 2019 and thereafter no payment was made. Thereafter, the respondent started forcing her to take the possession of the flat without occupancy certificate. When she refused to take the possession it has provided cheque of Rs. 14,00,000/- as security and assured her that the project will be completed soon and now it has started disputing the compensation amount and hence the present complaint is filed seeking relief as sought in this complaint.
4. The respondent on the other hand has resisted the claim of the complainant by filing reply on record of MahaRERA wherein it has stated that the complaint filed by the complainant is not tenable and the same is liable to be dismissed as same is filed by suppressing the material fact from record of MahaRERA. The respondent further stated that earlier the complainant had filed complaint no. CC005000000022010 wherein the order was passed on 24th May 2019. Since the complaint is filed against the same party for same cause of action it is not maintainable in the eyes of law and is hit by the law of res-judicata as per the section 11 of CPC.




5. The respondent further stated that if he did not comply with the consent terms signed by the parties in that event the complainant should have filed execution application before MahaRERA and by filing this fresh complaint she cannot seek the execution of the order passed by MahaRERA and on this ground also the complaint is liable to be dismissed. The respondent further stated that even the complainant has wrongly filed this complaint in his individual capacity and same is not filed against the company. It has further stated that as per the settlement arrived at between the parties he has already paid an amount of Rs. 3,00,000/- to the complainant and also issued cheque no. 053162 amounting to Rs. 14,00,000/- drawn by Rajaram Bapu Sahakari Bank Ltd., Akurdi, Pune Branch as security in favour of the complainant. Since he has already given the security to the complainant for her flat as well as compensation payable by him, the present complaint is not maintainable and the same is liable to be dismissed. The respondent further stated that the possession of the flat has already been given to the complainant on 12.11.2019 and same has been accepted by the complainant. However, due to present scenario of pandemic and present economic situation he is not in the position to pay the money to the complainant and however, he is ready and willing to abide by the settlement terms and conditions. Therefore, he prays for dismissal of this complaint.

6. The MahaRERA has examined the arguments advanced by both the parties as well as records. In the present case, by filing this complaint, the complainant is seeking compliance of the order dated 24.05.2019 passed by MahaRERA in the earlier complaint no. CC00500000022010 filed by the complainant under section 18 of the RERA. From the record, it appears that the said complaint was disposed of in view of the settlement arrived at between the parties whereby the respondent had agreed to pay compensation for the delayed possession from July 2014

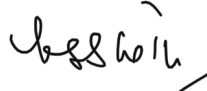
till the actual date of possession at the rate of 10% p.a. Accordingly, the respondent has made part compliance of the said order and has also given possession of the said flat to the complainant on 12.11.2019 and copy of the possession letter duly signed by the complainant has also been submitted on record of MahaRERA by the respondent.

7. In the present case, the respondent raised the issue of res-judicata. In this regard, MahaRERA is of the view that there is no order passed by MahaRERA on merits in the earlier complaint filed by the complainant under section 18 of the RERA. However, the said complaint was disposed of in view of the settlement arrived at between the parties whereby the respondent has agreed to pay the compensation to the complainant and accordingly part compliance of the order has been made. For compliance of the said order the complainant has filed this fresh complaint before MahaRERA.
8. However, the respondent by filing reply on record of MahaRERA has stated that he has made part compliance of the consent terms and has also given the cheque of Rs. 14,00,000/- towards the security of the compensation which he is liable to pay to the complainant and even the possession is handed over to the complainant. The respondent has further shown his readiness and willingness to comply with the settlement terms agreed by and between the parties.
9. In view of this fact, MahaRERA is of the view that since the respondent is ready and willing to pay the compensation as agreed between the parties in the consent terms, nothing survives in the complaint.
10. In view of these facts, MahaRERA directs the respondent to adhere to/ comply with the terms and conditions of the said consent terms filed



before MahaRERA in the earlier complaint no. CC005000000022010 filed by the complainant.

11.With these directions, the complaint stands disposed of.


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

