

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000089747

Pradip M. Mehta
Mrudula Pradip Mehta

... Complainants

Versus

Indiabulls Properties Private Limited
MahaRERA Regn. No. P52000001481

... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were represented by Mr. Nitin Parkhe, Adv.
Respondent was represented by Mr. Abir Patel, Adv., (i/b. Wadia Ghandy & Co.) a/w Mr. Soham Hatkar, Authorised Representative.

Order

February 20, 2020

1. The Complainants have filed this complaint wherein they have stated that they had booked an apartment bearing no: 401-C in the Respondent's project 'Indiabulls Savroli - 1' situated at Prabhadevi, Mumbai in 2014 and were promised possession of the apartment by February, 2018. Further, they alleged that the Respondent unilaterally changed the revised proposed date of possession to February 28, 2019 on their registration webpage and that even after revising the date of possession, the Respondent has failed to complete the project. They also stated that all the amenities promised to be provided are not provided more particularly golf course with 12 holes and club house. Therefore, the Complainants have alleged that the Respondent has failed to adhere to the clauses of the draft agreement for sale. Therefore, they prayed that the Respondent be directed to refund the amounts paid along with interest and penalise the Respondent under section 60 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*) for giving false information as per section 4 of the *said Act*.



2. The Complainants had filed an application that the Complaint be placed before the Hon'ble Adjudicating Officer as the reliefs prayed are of interest/compensation and therefore the same does not fall under the jurisdiction of the Authority to adjudicate the claim. Vide interim Order dated December 24, 2019 it was held that the Authority and the bench/benches constituted by the Authority in accordance with the provisions of the Act and rules and regulations made thereunder, as explained above, are duly empowered to decide matters related to the provisions of the said Act except for adjudging compensation as stipulated under the provisions of section 12, 14, 18 and 19 and that Since, at that stage before going into the merits of the Complaint, the question of adjudging compensation does not arise, the application for transfer to Adjudicating Officer was rejected.
3. When the matter was taken up for deciding on the merits of the complaint, the learned counsel for the Complainants submitted that the Complainants had sent an email to the Respondent, on 6th March 2019, asking for cancellation of the said booking on account of delay. Further, he submitted the Respondent is not constructing the amenities as promised in the project brochures and therefore, the Respondent has misrepresented fact to the Complainants.
4. The learned counsel for the Respondent, denying and contesting the claims made by the Complainant, submitted that the Respondent had asked the Complainants to come forward to execute and register the agreement for sale on various occasions, however, the Complainants have failed to do so. Further, he submitted the said apartment is still available and the Respondent is willing to execute and register the agreement for sale for the same. He also submitted that in case the Complainants intend to cancel the said booking, then such cancellation should be guided by clause 16 of the booking form as no agreement for sale has been executed between the parties. He also submitted that the brochure the Complainants are relying upon is not issued by the Respondent but by a third party and therefore, the Complainants cannot claim misrepresentation by the Respondent.
5. On review of the Respondent's registration webpage it is observed that the Respondent had obtained the part occupancy certificate (OC) of the buildings in which the said apartment is contained, on January 11, 2018, much before the present complaint had been filed. This part OC is even prior to the date of the e-mail of 6th March, 2019 when the Complainant sent email for cancellation of the said apartment.
6. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:



*" if the promoter fails to complete or is unable to give possession of an apartment, plot or building, –
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the
date specified therein;*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project,
without prejudice to any other remedy available, to return the amount received by him in respect of
that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in
this behalf including compensation in the manner as provided under this Act: Provided that where an
allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for
every month of delay, till the handing over of the possession, at such rate as may be prescribed. "*

Accordingly, since no agreement for sale has been executed and registered between the parties, no directions to refund the amounts paid along with interest and compensation under the provisions of section 18 of the said Act, can be given in the present case.

7. In view of the submission of the learned counsel for the Respondent that the said apartment is still available and the Respondent is willing to execute and register the agreement for sale for the same, the Complainants are advised to execute and register the agreement for sale as per the provisions of section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order.
8. In case, the Complainants are still firm on their decision to cancel their booking and their intension to withdraw from the said project, then refund, if any, shall be guided by the terms and conditions of the booking form.
9. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO. CC006000000089747

Pradip M. Mehta

Mrudula Pradip Mehta

... Complainants

Versus

Sylvanus Properties Limited

MahaRERA Regn. No. P52000001481

... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

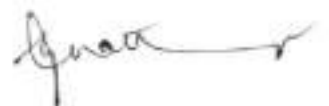
Complainants were represented by Mr. Nitin Parkhe, Adv.

Respondent was represented by Mr. Abir Patel, Adv., (i/b. Wadia Ghandy & Co.) a/w Mr. Soham Hatkar, Authorised Representative.

Interim Order

December 24, 2019

1. The Complainants have filed this complaint wherein they have stated that they have booked an apartment bearing no: 401-C in the Respondent's project 'Indiabulls Savroli - 1' situated at Prabhadevi, Mumbai in 2014 and were promised possession of the apartment by February, 2018. Further, they alleged the Respondent unilaterally changed the revised proposed date of possession to February 28, 2019 on their registration webpage and that even after revising the date of possession has failed to complete the project. They also stated that all the amenities promised to be provided are not provided more particularly golf course with 12 holes and club house. Therefore, the Complainants have alleged that the Respondent has failed to adhere to the clauses of the draft agreement for sale. Therefore, they prayed that the Respondent be directed to refund the amounts paid along with interest and penalise the Respondent under section 60 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*) for giving false information as per section 4 of the said Act.



2. The learned Counsel for the Complainants submitted that the Complaint be placed before the Hon'ble Adjudicating Officer as the reliefs prayed are of interest/compensation and therefore the same does not fall under the jurisdiction of the Authority to adjudicate the claim.
3. The learned counsel for the Respondent submitted that the Authority, which in the present case is the Hon'ble Chairperson, has to first come to the conclusion that there has been, prima facie, a violation of the provisions of the Real Estate (Regulation and Development) Act, 2016, and that the Complainant is entitled to compensation. Further, he submitted that the Complainants must first show what provision has been violated by the Respondent as it is a mandatory requirement under section 31 of the said Act. Assuming the Complainant manages to make out a case for violation of the said Act, and the Authority comes to a finding that in addition to any interest or penalty, the Complainant is also entitled to compensation, in such a case, the Authority refers the case to the Adjudicating Officer for the limited purpose of calculating and adjudging compensation, based on the factors laid down in section 72 of the said Act. He submitted that the Complainants cannot be allowed to do forum shopping.
4. Relevant provisions of the said Act:
 - A. Definition of Adjudicating Officer and Authority:
 - i. Section 2(a) of the said act reads thus:
"adjudicating officer" means the adjudicating officer appointed under sub-section (1) of Section 71;
 - ii. Section 2(i) of the said act reads thus:
"Authority" means the Real Estate Regulatory Authority established under subsection (1) of Section 20.
 - iii. Section 20 (1) of the Act reads as thus:
The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

...



- iv. Section 21 of the Act reads as thus:

21. The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

- v. Section 71 of the said Act reads as follow:

Power to adjudicate

71. (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard;

...

Thus, an Adjudicating Officer is appointed by the Authority, in consultation with the appropriate Government, under Section 71, whereas an Authority is constituted under Section 20(1) read with Section 21.

B. Powers of Authority:

- i. Section 31 of the said Act reads as thus:

31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

- ii. Regulation 24 of the MahaRERA General Regulations, 2017 reads as thus:

24. For adjudication proceedings with respect to complaints filed with the Authority, the Authority may, by order, direct that specific matters or issues be heard and decided by a single bench of either the Chairperson or any Member of the Authority.

- iii. Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 reads as thus:

7. Manner of filing a complaint with the Adjudicating Officer and the manner of holding an inquiry by the Adjudicating Officer. – (1) Any aggrieved person may file a complaint



with the Adjudicating Officer, through the office of the Authority, for compensation under section 12, 14, 18 and 19. The complaint shall be filed in Form 'B' which shall be accompanied by a fee of rupees five thousand through NEFT or RTGS system or any other digital transaction mode.

...

The Authority has the power to direct matters to be heard and decided by individual benches of either chairperson or any member of the Authority. It is therefore clear that even under the Maharashtra Regulations, matters are to be heard only by chairperson or members of the Authority. Rule 7 provides that all complaints filed under any provisions of the Act, shall be filed through the Authority.

- iv. Section 34(f) of the said Act reads as follows:

34. The functions of the Authority shall include –

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

- v. Section 35 of the said Act reads as follows:

Powers of Authority to call for information, conduct investigations.

35. (1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely: –

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;*
- (ii) summoning and enforcing the attendance of persons and examining them on oath;*
- (iii) issuing commissions for the examination of witnesses or documents;*
- (iv) any other matter which may be prescribed.*



- vi. Section 36 of the said Act reads as follows:

Power to issue interim orders.

Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

- vii. Section 37 of the said Act reads as follows:

Powers of Authority to issue directions.

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

- viii. Section 38 of the said Act reads as follows:

Powers of Authority

38. (1) *The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.*

(2) *The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.*

(3) *Where an issue is raised relating to agreement, action, omission, practice or procedure that –*

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may suo motu, make reference in respect of such issue to the Competition

Commission of India.



Under Section 38(1) it becomes evident that it is the Authority that has the powers to impose penalty or interest for any contravention of obligations case upon a promoter, allottee or real estate agent under the provisions of the Act and the Rules made thereunder.

- ix. Section 60 reads as thus:

If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.

Under Section 60 of the said Act, the Authority has been bestowed with powers to impose penalty for contravention of any provisions of the Act apart from the provisions of Sections 3 and 4.

- x. Section 61 reads thus:

61. If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority."

Under Section 61 of the said Act, the Authority has been bestowed with powers to impose penalty for contravention of any provisions of the Act apart from the provisions of Section 4.

- xi. Section 63 reads thus:

If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.

Section 63 gives the Authority the power to impose penalty upon a promoter for failure to abide by any orders of the Authority.

Similarly, under section 67 penalty can be imposed upon an allottee by the Authority for contravention of its order.



C. Powers of Adjudicating Officer:

- i. Section 71 of the said Act reads as follow:

Power to adjudicate

71. (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

...

An Adjudicating Officer is appointed by the Authority for adjudging compensation under Sections 12, 14, 18 and 19 of the Act. The appointment of the Adjudicating Officer is provided for under Section 71 of the said Act which clearly provides that an Adjudicating Officer is appointed solely for the purposes of adjudging compensation.

It is quite obvious from the scheme of the said Act itself that the roles of the Authority and an Adjudicating Officer are very distinct from one another.

An Authority is entrusted with the power of ascertaining whether or not the provisions of the Act or obligations cast on parties by the said Act, have been violated whereas the Adjudicating Officer only comes into the picture once the Authority has come to the conclusion that a promoter, allottee or real estate agent, as the case may be, has in fact violated the provisions of the Act or the obligations cast upon them by the Act and is liable to pay compensation. The Adjudicating officer then adjudges the quantum of the said compensation.

The provisions of the Act as stated above, ascertain various functions of the Authority and duly empower the Authority to deal with matters related to compliances and violations of the provisions of the said Act. Sections 35 and 38 of the said Act specifically empower the Authority to try and dispose of the complaints alleging contraventions of any provision of the Act and to also impose interest and penalty, wherever necessary.

It is pertinent to note that the scheme of the Act does not give an adjudicating officer any such powers of penalty as envisaged under Sections 61, 63 and 67 of the Act.



This is because, an adjudicating officer is only appointed for the purposes of quantification of compensation.

In exercise of its jurisdiction under section 38 of the Act, the Chairperson/Member of the Authority, after hearing the contentions of both the parties, comes to the conclusion that a breach has been committed by the Respondent and the Complainants is liable to be paid a compensation under the provisions of the said Act, the Complaint is transferred to the Adjudicating Officer for the limited purposes of adjudging compensation under the provisions of sections 12, 14, 18 and 19, as the case may be. If the Chairperson/Member of the Authority comes to a conclusion that no case is made out for breach of any obligations under the provisions of sections 12, 14, 18 and 19, necessitating adjudging of compensation, the question of transferring/referring the matter to the Adjudication Officer under section 71 of the Act to adjudicate compensation does not arise.

In other words, section 71 of the Act would therefore come into play only where the Chairperson/Member comes to the conclusion that a compensation is required to be adjudged. While the jurisdiction of the Authority is therefore much wider, the jurisdiction of the Adjudicating officer under section 71 of the Act is restricted to adjudging compensation under sections 12, 14, 18 and 19 of the Act.

It is therefore clear that a complaint for violation of the provisions of the said act is to be made only to the Authority who only after coming to the conclusion that compensation must be awarded to the Complainants for violation of any of Section 12, 14, 18 or 19, refers the matter to the Adjudicating Officer for quantifying compensation.

Accordingly, in terms of provisions of section 31 of the Act read with Regulation 24 and Rule 7 as stated above, the present Complaint was listed before the Chairman of the Authority for hearing and is being decided on the contentions raised by the learned counsel for the Complainants disputing the jurisdiction of the Authority for presiding over Complaints filed under section 71.

5. In the present complaint, the learned Counsel for the Complainants have stated that they are seeking interest and compensation and penalty to be imposed on the Respondent.



6. As explained above, section 71 of the said Act would come into play only where the Chairperson/Member comes to the conclusion that a compensation is required to be adjudged in the complaint filed in the instant case, which will be decided in due course after hearing rival submissions from both parties.
7. The learned counsel for the Complainants relied upon the Order in Complaint no: CC005000000054615 submitting that the said Order specifically records that once the Complainant seeks refund along with penal interest and compensation, then same needs to be adjudicated and decided by the Adjudicating Officer. Further, he also relied on the Roznama in Complaint No: CC006000000023905 submitting that the said Roznama records that the since the Complainant want to withdraw under section 18 therefore the matter stands transferred to the AO.

In Complaint no: CC005000000054615 para 7 reads as below:

Referring to Section 71 of the said Act which deals with power to adjudicate, it was pointed out that the appointment of the Adjudicating Officer is for the purpose of adjudging compensation under sections 12, 14, 18 and 19. Hence, it was explained that only those part of the above-mentioned sections which deal with adjudging and awarding compensation, will fall under the jurisdiction of Adjudicating Officers.

As far as other parts of the above-mentioned sections that do not deal with compensation is concerned, the jurisdiction shall lie with the Authority.

Complaint no: CC006000000023905 was also first listed before this bench and then transferred to the Hon'ble Adjudication Officer for adjudging compensation.

8. In view of the above facts, the Authority and the bench/benches constituted by the Authority in accordance with the provisions of the Act and rules and regulations made thereunder, as explained above, are duly empowered to decide matters related to the provisions of the said Act except for adjudging compensation as stipulated under the provisions of section 12, 14, 18 and 19.
9. Since, at this stage before going into the merits of the Complaint, the question of adjudging compensation does not arise, the application for transfer to Adjudicating Officer stands rejected.



10. Complaint stands adjourned to January 29, 2019. Notice of hearing to be issued accordingly.


(Gautam Chatterjee)
Chairperson, MahaRERA