

BEFORE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC005000000010538

Mohan Narhar & Anr. ... Complainant.

Versus

Lavasa Corporation Ltd.
(Brookview) ... Respondents.

MahaRERA Regn: P52100013646.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Complainant: Mr. V.V. Kale, Adv.
Respondents: M/s. Raina Vidya.

Final Order

29th January 2018.

The parties have been heard on the maintainability of the complaint as the legal issue, whether lessee can file a complaint under The Real Estate (Regulation and Development) Act, 2016 against a lessor, is involved in this complaint.

2. The complainant in his complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), contends that he booked flat no. 01, In Lakeview (07), Dasve Circle, Dasve, Pune which is registered project of respondents. The respondents entered into an agreement with the complainant on 18.12.2012 and agreed to hand over possession of the flat within 24 months i.e. on or before 17.12.2016. However, the respondents have failed to deliver the possession on the agreed date. Hence, they have filed this complaint. Respondents have taken the objection that the complainants are lessees and hence they cannot file this complaint under RERA.



3. I have heard Advocate Mr. Kale who has filed the written notes of his argument also. According to him, in the agreement of lease the complainants have been described as 'customers' and not as lessees. Huge consideration on the basis of area is charged in the name of premium but the rent is nominal that is Rs. 1 per year. It is for 999 years without the clause of inception and expiry of lease period. In allotment letter the respondents have used word allotted. It is perpetual lease which amounts to transfer of ownership, hence the respondents have registered their project under RERA. So he submits that the complainants are allottees and complaint is maintainable. Ms. Vaidya submits that complainants are lessees and hence they cannot file this complaint under RERA.


4. Following points arise for determination and I record finding thereon as under:

POINT	FINDING
Whether lessee can file a complaint under The Real Estate (Regulation and Development) Act, 2016 against a lessor?	Negative.

REASONS

Factual aspect.

5. The complainants have relied upon the registered agreement executed by the respondents in their favour. On its perusal, I find that it is "agreement to lease of apartment". Its clause-5.1 clearly shows that the customer (the complainant) agreed to take on lease the apartment from the respondents for the premium and lease rent. The complainants agreed to pay Rs. 20,36,700/- towards premium and clause-7 of the agreement shows that they agreed to pay rent of Rs.1/- per annum. The lease period is for 999 years as per clause 4(e). Clause-25 of the said agreement shows that respondents are sole and absolute



owners of the lot whereupon the building will be constructed and the said apartment will be situated. There is clause regarding renewal of lease on further premium. On perusal of these contents, there remains no doubt in my mind that it is a lease agreement.

6. Mr. Kale submits that it is a perpetual lease which amounts to ownership. I find it difficult to accept this as a valid proposition of law. The agreement shows that it is for 999 years, it means that the period of lease has been clearly mentioned therein. Mr. Kale relies upon dictionary meaning of allottee and allotment. I find that RERA has specifically defined the term and therefore, one has to adhere to it. With this backdrop now it is necessary to deal with the legal aspect of the matter.

Legal Aspect:

7. The crucial question to be addressed is, whether the provisions of RERA are applicable to the transaction of lease. For this purpose, it is necessary to look at the definition of allottee defined by section 2(d) of the Act. It reads as under:

“ allottee” in real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or buildings, as the case may be, is given on rent;”

8. The definition of the allottee, therefore, precludes a person whom such an apartment is given on rent. Hence, the complainants cannot be said to be allottees within this definition.


9. Section 2(zk) defines promoter as under:

“ promoter” means,--



- (i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development authority or any other public body in respect of allottees of*
 -
 - (a) *building or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
 - (b) *Plots owned by such authority or body or placed at their disposal by the Government; for the purpose of selling all or some of the apartments or plots, or*
- (iv) *an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- (v) *any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*
- (vi) *such other person who constructs any building or apartment for sale to the general public.*

Explanation: - For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons



who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder; “

10. This definition therefore, clearly shows that if any building is built or converted for sale partly or fully then such person comes under the definition of promoter. Then comes Section 3 which provides except the project mentioned in Sub-Section (2) of Section 3, all the projects which are ongoing or which are going to start will have to be registered if they are to be sold wholly or partly. This Section also provides that entire project or part of it must be for sale. The Section 9 provides for registration of Real Estate Agents. According to it, no real estate agent can facilitate the sale or purchase or act on behalf of any person to facilitate sale or purchase of plot, apartment or building, unless he has registered with the Real Estate Regulatory Authority. So the agent cannot participate in the process of selling or purchasing the plot, apartment and building without getting registered with the Authority. The other provisions of Section 11 are regarding functions and duties of the promoter. Section 12 is regarding veracity of advertisement and prospectus. Section 13 is about promoter's liability not to accept more than 10% without first entering into agreement for sale. Section 14 is about adherence to sanctioned plans and project specifications. Section 16 obliges promoter to insure the project and section 17 relates to transfer the title. The complainants have filed this complaint under Section 18 of RERA. It provides that on promoter's failure to complete an apartment, plot or building in accordance with the terms of the **agreement for sale** or his inability to give possession of apartment, plot or building, the allottee gets right to get refund of his amount with interest and/or compensation, if he withdraws and if he continues then he is entitled to get interest on his investment for every month of delay, till he gets the possession. He is also entitled to get compensation in case of breach of terms and conditions



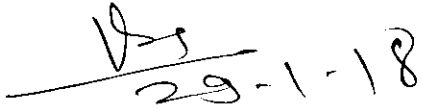
of **agreement for sale** and if he sustains any loss due to defective title of land. Section 19 relates to rights and duties of allottee. So after taking the review of all these provisions of law, I find that these provisions relate to the sale of the plot, apartment and building. Section 31 of the Act confers jurisdiction on the Authority or Adjudicating Officer only when there is violation or contravention of the provisions of RERA or the rules and regulations made thereunder. After going through these provisions, I find that RERA is not applicable to the transactions of lease. Since the complainants have agreed to take an apartment from respondents on lease, MahaRERA does not get any jurisdiction to adjudicate upon their complaint. Hence it requires to be dismissed for want of jurisdiction.

11. MahaRERA has very limited jurisdiction when it makes the enquiry in the complaints. Mr. Kale submits that intention of the parties is the important aspect while ascertaining the nature of the documents. I agree with him. The parties are educated. Face value to the contents of agreement will have to be given and therefore, I hold that the agreement is not for sale of the flat but it is for lease. If the complainants still feel that it is necessary to vindicate their rights they are at liberty to approach the proper forum to get it declared after full-fledged trial that the agreement though is styled as 'agreement for lease', is in fact, an 'agreement for sale'. Hence, the following order.

ORDER

The complaint is dismissed for want of jurisdiction.

Mumbai.
Date: 29.01.2018.


(B.D. Kapadnis)
Member & Adjudicating Officer
MahaRERA, Mumbai.