

BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000010189

Dilip Maganlal Sangoi
residing at Room No.2, Ground Floor,
D- Building, Motisa Jain Park,
Motisa Lane, Byculla (East),
Mumbai 400 027.Appellant

Versus
M/s. Veena Developers, having its
Office at Shop No.1, Veena Sarang,
Opp. Kamla Vihar Sports Club,
Saibaba Nagar Extn. Road, Borivali
(West), Mumbai 400 092. Respondent

Shri Dilip Sangoi, the Appellant in person, Shri Harshit Sangoi, C.A. appearing for Appellant.

Shri Omkar Kulkarni, Adv. for the Respondent/ Promoter.

CORAM : INDIRA JAIN J., CHAIRPERSON &
S.S. SANDHU, MEMBER(A)
DATE : 18th FEBRUARY, 2019.

JUDGMENT (PER : INDIRA JAIN, J.)

This appeal takes an exception to the order dated 21st December, 2017 passed by the Ld. Member-I, Maharashtra Real Estate Regulatory Authority in Complaint No. CC00600000001284. By the said order,

complaint filed by the appellant came to be disposed of holding that ongoing projects which have received the completion certificate / part occupancy certificate did not require registration as per Section 3 of RER Act, 2016 and where the project is to be developed in phases, every such phase shall be considered as standalone real estate project. It was also observed that respondent / promoter registered the project in phases and if the flat of complainant is not a part of registered phase, in that event respondent need not mention the pending litigation on MahaRERA website.

2. For the sake of convenience, we would refer the appellant and respondent in their original status as complainant and promoter.

3. It is the case of the complainant that he booked Flat No. 321 admeasuring 915 sq.ft. in 'F' Wing of 'Veena Sarang II' situated on Survey No. 163 (pt.), CTS No. 128/A/77, 771/1 & 2 (pt.) of Kandivali Village, Taluka Borivali, Mumbai.

4. A grievance was made by the complainant that the Promoter failed to sell the said flat to him despite discharging necessary obligations on his part. It was contended that Civil Suit No. 730 of 2012 was filed by complainant against the respondent initially before the Hon'ble High Court, Bombay. Later on, the suit was transferred on pecuniary jurisdiction to the City Civil Court, Mumbai. The same is pending. In the said suit, Notice of Motion taken out by complainant was partly allowed and promoter was restrained from creating third party rights in respect of disputed flat. According to complainant while registering the said project in the name of 'Veena Signature', promoter not only changed the name but did not even disclose the litigation pending before the City Civil Court. It is contended that for non-disclosure of pending litigation at the time of registration, Certificate needs to be revoked.

5. Respondent appeared before the Authority and disputed the contentions raised in the complaint. It was contended that 'Veena Sarang II' and 'Veena Signature' are the buildings in different phases and 'Veena Signature' is standalone building. According to the Promoter, matter is subjudice before the City Civil Court and as flat of complainant is subject matter of the suit, Authority under RERA would not be in a position to go into the issues which parties are litigating before the competent Civil Court. Based on these defences, Promoter prayed to reject the complaint.

6. Considering the rival submissions, Authority observed and disposed of the complaint as stated in para 1 supra.

7. Being aggrieved, flat purchaser raised the following grounds in this appeal.

- i] Respondent has changed the name of Veena Sarang II as Veena Signature and this fact has been lost sight of by the Ld. Member;
- ii] From CTS No. in commencement certificate pertaining to the project 'Veena Signature', Allotment Letter issued to the complainant and CTS No. in the application submitted by 'Veena Developers' available on MahaRERA website it is clear that 'Veena Signature' is nothing but change in the name of 'Veena Sarang II'.
- iii] Authority did not take cognizance of the documents placed on record and committed an error in holding that flat booked by complainant with Veena Developers is not a part of registered project 'Veena Signature'.
- iv] At the time of moving RERA application, Promoter did not disclose pending litigation before City Civil Court and such non-disclosure

has adversely affected the rights of complainant being the flat purchaser in 'Veena Sarang II'.

8. Respondent though contested the grounds raised in appeal chose not to place on record relevant documents to differentiate between two buildings 'Veena Signature' and 'Veena Sarang II'.
9. From the rival pleadings and submissions advanced on behalf of the parties, following points would arise for our consideration in this appeal and we have recorded our findings against each of them for the reasons to follow :

| <u>Points</u> | <u>Findings</u> |
|---|-----------------|
| a] Whether the impugned order dt. 21st December, 2017 is sustainable in law ? | Yes |
| b] Whether the order challenged calls for interference in this appeal ? | No |

Reasons

10. Needless to state here that main object of disclosure of facts relating to the registered projects under Section 4 of RER Act is to have transparency so as to enable the prospective purchasers to be equipped with the relevant information at the time of purchasing the flat. It is not in dispute that complainant has filed a Civil Suit and the subject matter of suit is the flat in question.
11. There is no denying the fact that vide order dated 15th February, 2013 Promoter has been restrained by the City Civil Court from creating third party rights in respect of the flat booked by



complainant in 'Veena Sarang II' Building. It is also not in dispute that the order was challenged before the Hon'ble High Court and the proceedings came to be dismissed by the Hon'ble High Court vide order dated 1st December, 2015. The Ld. Counsel for respondent submitted that vide order dated 04.02.2019 Promoter has been directed to maintain status-quo till 21.03.2019 and in support thereof copy of the case status is placed on record by him.

12. This clearly indicates that issues involved in the proceedings under RER Act are identical to the issues in Civil Suit pending before the competent Civil Court. This being so judicial discipline requires that we should refrain ourselves from going into the controversy as decision of the competent Civil Court will have a decisive bearing on the issues involved in this appeal. In this premise, we do not find any infirmity in the impugned order. No interference is thus called for. Hence the following order:

:-ORDER:-

[i] Appeal dismissed.

[ii] No costs.



(S.S. SANDHU)



(INDIRA JAIN J)