

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC005000000000254

Dilip Purushottam Shirke.

... Complainant.

Versus

Kumar Builders Consortium.
MahaRERA Regn: P52100005467.

... Respondent.

Complainant Represented by Mr.R. N. Walvekar.
Respondent Represented by Mr. Manish Gala Adv.

Coram: Hon'ble Shri B.D. KAPADNIS.

26th October 2017

Final Order

The complainant has filed this complaint u/s.18 of The Real Estate (Regulation & Development) Act, 2016 (for short, RERA) and requested to direct the respondent to hand over the possession of his booked flat no. 203 wing A3 situated in Kumar Shantiniketan Phase II, Haveli Pune within 3 months. He contends that the respondents did not complete the project by the end of December, 2016 as agreed in their consent terms which has resulted in the decree of the civil court, Pune. Therefore, he claims compensation @ 10% p.a. on the amounts received by them. He also seeks compensation @10% p.a..

2. The complainant further alleges that the respondents while registering their project with MahaRERA did not mention the decree passed in RCS No.5780/12 by the civil judge Pune as well as about CC/13/30 to 35 decided by state consumer forum. They did not produce the commencement certificate and thereby, contravened Section 4 r/w. Section 60 of RERA.

3. At the stage of admission, I have heard the learned advocates of the parties and perused the record.

4. Section 18 makes the promoter liable to return all the amounts paid by the allottee if he fails to complete the project by the date specified in the

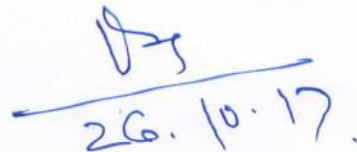


agreement. The copy of the decree passed in RCS no. 5780/2012 is placed on record by the complainant himself. It shows that the respondents agreed to complete the project on or before 31st December, 2016. It is mentioned therein, that in case of their failure to hand over the possession on or before 31st December, 2016, they shall pay the compensation of Rs. 10,000/- per month till delivery of possession of the flats to the concerned plaintiffs. The complainant is the plaintiff no. 34 in the said matter. Therefore, he is bound by the decree. Once this issue is decided by the civil court, it cannot be reopened as it acts as res judicata. Hence, the complainant cannot seek the same relief by invoking Section 18 again. On this ground his complaint is not maintainable u/s. 18 of RERA.

5. Section 4 of RERA casts duty on the promoter to produce documents mentioned in sub clause (2) while making application for registration. Clause (b) of this subsection requires to submit brief details of pending cases relating to the project. Admittedly RCS No.5780/12 decree by the civil judge Pune as well as CC/13/30 to 35 decided by state consumer forum were not pending when the respondents registered their project.

6. Clause (c) of subsection (2) of Section 4 requires the production of authenticated copy of the approvals and commencement certificate. The complainant himself has produced the copy of the commencement certificate of the respondents' project. I have also taken a note of the fact that while developing the software of registration form, it has not been made mandatory to submit the commencement certificate. Therefore, this benefit goes to the respondents. In result, Section 4 r/w. Section 60 of RERA is not attracted.

7. In the facts and circumstances of the case, I find no point to admit and adjudicate this complaint. Therefore, complainant should bear his cost and should pay Rs. 10,000/- to the respondents towards their cost of complaint. With this, the complaint is dismissed.


26.10.17.

Mumbai
Date: 26.10.2017.

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