

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

COMPLAINT NO: CC006000000000825

Mr. Chauthiprasad S. Gupta and others

.... Complainants

Versus

M/s. Nahalchand Laloochand Pvt Ltd.

MahaRERA Registration No.P51800004816

..... Respondent

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

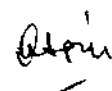
Advocate Mr. Anand Rai appeared for the complainants.

Advocate Mr. Rajesh Kachare a/w Advocate Gaurav Patankar appeared for the respondent

ORDER

(7th May, 2018)

1. The complainants have filed this complaint seeking following directions from this Authority to the respondent in respect of booking of a flat No. B-1102 in the project known as "NL Aryavarta" at Dahisar (East), Mumbai bearing MahaRERA registration No. P51800004816.
 - a. To withdraw the termination letter dated 23.12.2015 issued by the respondent.
 - b. Interest at the rate of 26% be allowed to complainants on the amount received by respondent during the year 2011-2014 or remove the interest levied on delayed payment, if any on the complainants.

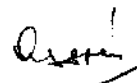


- c. Refund a sum of Rs. 8,00,000/- (Rupees Eight Lakhs only) collected as parking charges from the complainants.
2. This complaint was heard on several dates when the advocates for both the parties appeared and pleaded their case at length and also filed written submissions before the Authority.
3. The complainants have argued before this Authority that they had booked a 3BHK flat No. B-1102 in the respondent's project in the year 2011 and paid more than 60% of total consideration amount of the said flat. Thereafter, the said project was stopped by respondent and in the year 2014-2015, it was re-started with new name and enhanced area and increasing the cost of the flat. The respondent executed and registered sale agreement dated 05.02.2015 with the complainants. The latter have paid an amount of Rs. 90,98,860/- including stamp duty and registration charges till construction of 15th slab of the said building up to 22-12-2015. However, the respondent terminated the said agreement for the sale unilaterally and without giving any opportunity to the complainants. The complainants further stated that they had made slab wise payments to the respondent. They, therefore, challenged the said termination before the Consumer Disputes Redressal Forum, Mumbai Suburban District in Complaint No. CC /111/2016. However, the complainants on 28-07-2017 due to the pecuniary jurisdiction of the said forum with liberty to file the case before the appropriate forum. Accordingly, the present complaint has been filed with this Authority.
4. The respondent has disputed the claim of the complainants and stated that since the termination of the agreement was done prior to commencement of the RERA Act, this Authority has no jurisdiction to try and entertain this complainant. Further, the said termination of the agreement was done due

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to the default on the part of complainants for payment. The said termination was done as per the terms and conditions of the registered agreement for sale executed between them. The termination notice was sent to the complainants through R.P.A.D. However, the complainants refused to accept the same. Hence, it was deemed to have been duly served upon the complainants. The respondent further argued that the termination notice was also published in the local news paper Free Press dated 5-03-2016 and Navshakti. The said termination was validly done by the respondent due to default made by the complainants for payment of outstanding dues for which various demand notices were issued to the complainants. The respondent further stated that after cancellation of the said agreement, he has sold the said flat to third party and therefore, now he cannot allot the same to the complainants. The respondent, therefore, requested for dismissal of this complaint.

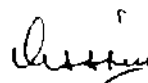
5. With regard to the jurisdiction issue raised by the respondent of this Authority to decide this complainant, this Authority is of the view that the respondent's project being ongoing project has registered with MahaRERA under Section-3 of the RERA Act, 2016. The jurisdiction of this Authority on such project continues till the project gets completed fully and obligation of the promoter regarding the project get fully discharged. This Authority, therefore, has jurisdiction to hear the complainants' grievances concerning the project.
6. The complainants have challenged the cancellation letter dated 23-12-2015 issued by the respondent for cancellation of the booking of the flat by the complainants on the ground of default payment. Admittedly, there is registered agreement for sale executed between the complainants and the respondent on 5-02-2015. Clause 4 of the said agreement provides that the



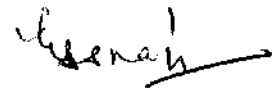
allottee is liable to make slab wise payment to the promoter. The said clause reads as under;

"It is expressly agreed by and between the parties thereto that in respect of the above payments, time is the essence of the contract. If the Purchasers commit default in payment of the aforesaid instalments on their respective due dates (time being essence of the contract), the developer shall without prejudice to their rights against the Purchaser/s be at liberty to terminate this agreement in which event all amounts paid by the Purchaser to the developer shall be forfeited."

7. The main essence of the termination as alleged by the respondent is default in payment by the complainants. However, the complainants have submitted payment chart on record of this Authority, which clearly shows that the complainants have made last payment through NEFT from State Bank of India on 22-12-2015 for the 15th slab. The said payment was duly accepted and credited on account of the respondent. On one hand, the respondent went on accepting the payment made by the allottees right upto Dec. 2015, and on the other hand he issued the letter of cancellation in the same month. This shows very clearly the unethical and unscrupulous behaviour of the promoter. Moreover, the said termination notice was not duly served upon the complainants. The respondent has not produced any cogent documentary proof on record of this Authority showing that the complainants are the habitual defaulters. Therefore, the said cancellation is bad in law.
8. With regard to the contention raised by the respondent regarding the creation of third party interest in respect of the complainants flat, no evidence has been brought on record of this Authority by the respondent to show that the complainants flat has been sold to third party. Hence, the said contention of the respondent cannot be accepted.



9. In view of the facts of this case and above observations, this Authority hereby holds that the registered agreement for sale executed between the complainants and the respondent is valid and subsisting and binding upon both the parties.
10. With these directions, the complaint stands disposed of. A cost of Rs. 10,000/- is imposed on the respondent.



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