

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

Complaint No. CC00600000057098

Chandrakala Harakchand

..... Complainant

Versus

A.H. Construction

Ozone Lifestyle Projects Private Limited

Conoor Builders Private Limited

..... Respondents

Project Registration No. **P51800002922**

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

Adv. Shweta Merchant appeared for the complainant.

Adv. Abir Patel appeared for the respondent.

ORDER

(6th August, 2019)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to adhere to the terms and conditions of the allotment letter and to execute an agreement for sale with respect to booking of a flat No. 504, admeasuring 1080 sq. ft. saleable area, in the respondents' project known as "The Gateway" bearing MahaRERA project registration No. P51800002922. The complainant further requested that if the respondent No. 3 has sold the flat No. 504 to any 3rd party, he may be allowed to allot the same flat without any further charges.
2. The matter was heard on several occasions when the complainant and the respondent-2 and 3 appeared through their respective advocates and made their oral as well as written submissions on record of MahaRERA.
3. It is the complaint of the complainant that he has purchased the flat 504 in the building known as "AH Shalom Tower", initially constructed by the respondent No.1. Accordingly, the respondent No.1 had issued an

allotment letter 5/4/2010 in favour of the complainant. In the said letter, the respondent No.1 mentioned the date of completion of the project as December 2012. The complainant had booked the said flat for a total consideration amount of Rs. 42,00,000/- Out of this, he had paid an amount of Rs. 8,52,000/- i.e. 20% of the cost of the flat. However, the respondent No.1 failed to execute the registered agreement for sale with the complainant. The complainant continuously followed the respondent No.1 and requested him for execution of registered agreement for sale. However, the respondent No.1 gave only assurance that, he will execute the registered agreement for sale. Therefore on 28/10/2015, the complainant issued a legal notice to the respondent No.1 for execution of registered agreement for sale. However, the same was not replied by the respondent No.1.

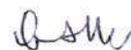
4. In the year 2016, the respondent No.3 put his board on site and the complainant came to know that, the respondent No. 3 has taken over the project from the respondent No. 1. He, therefore, issued a legal notice to respondent No. 1 as well as to respondent No. 3 on 4th May, 2016. But, the same was not replied by the respondents. The complainant stated that, the respondent No. 3 had acquired the development rights from respondent No. 1 and it is liable to comply with the obligations towards the complainant allottees. He further argued that, the respondent No. 1 has cheated him and therefore, requested to issue an order in this matter on merits.
5. The respondent No. 1 did not appear at the time of hearing. The respondent No. 2 has filed his reply stating that, present complaint is not maintainable as there is no privity of contract between it and the complainant. The respondent No. 1 further clarified that, it was appointed as project manager vide project development agreement dated 01/03/2017 and as per the terms and conditions of the said agreement, the respondent No. 2 is not liable towards the allottees of the project. Moreover, since the respondent has not violated any provisions of

the RERA, no relief can be granted in favour complainant against the respondent No. 2.

6. The respondent No. 3 disputed the claims of the complainant and argued that, the present complaint is not maintainable and is liable to be dismissed on the ground that the complainant had suppressed the material facts before this authority and not come before MahaRERA with clean hands. The complainant had filed the complaint before the State Consumer Dispute Redressal Commission bearing complaint No. CC /18/494. In the said complaint no relief had been granted; thereafter, the complainant had filed civil suit before the City Civil Court, Dindoshi for the same cause of action and failing to get any favourable order from these forums, the complainant has approached the MahaRERA with malafide intentions.
7. The respondent No. 3 further argued that, it has entered in to the project in the year 2013 by executing a registered development agreement with the respondent No.1 dated 25/03/2013. At that time, the respondent did not disclose the said allotment done in favour of the complainant. Even the respondent No. 3 is not aware of the allotment of flat No. 504 and no money has been received from the complainant. The respondent No. 3 argued that he has paid an amount of Rs. 15,00,00,000/- to the respondent No. 1 for acquiring the development rights. There is no contractual relationship between the complainant and the respondent No. 3. Therefore, the respondent No.1 is personally liable to pay amount to its allottees as it is an old transaction. The respondent No. 3, therefore requested for dismissal of this complaint.
8. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainant is claiming to be allottee of the project registered by the respondent No. 1. The complainant is seeking specific performance of the allotment letter dated 5/4/2010 issued by the Respondent No. 1. Admittedly, there is no registered agreement for sale executed in favour of the complainant and

prima facie, it appears that, the complainant had booked a flat with earlier promoter/ developer with respondent No. 1 which is not a party to the project registered with MahaRERA bearing MahaRERA registration No. P51800002922 and therefore, MahaRERA cannot grant any relief against the Respondent No. 1.

9. Moreover, since there is lack of any sort of contract between the complainant and the respondent No. 3 whose project is registered with MahaRERA, the complainant cannot seek relief against the respondent No.3. Further, the MahaRERA has observed that, the complainant in his complaint has suppressed the material facts that earlier he had approached various other forums for redressal of the grievances. It shows that, the complainant has submitted false declaration on record of MahaRERA while filing this complaint and he has not come before MahaRERA with clean hands. Therefore, the MahaRERA feels that the complainant is not entitled to seek any relief from the MahaRERA. Since, there is a specific performance of the allotment letter, the matter being civil in nature, MahaRERA cannot decide the same as the complainant is required to approach the Civil Court of Law.
10. In the light of these facts, the MahaRERA cannot entertain the present complaint and hence, the same stands dismissed for want of merits.



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