

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY
MUMBAI.

COMPLAINT NO: CC0060000000054729

Mr. Parth Bharat Suchak

... Complainant.

Versus

M/S Renaissance Infrastructure
Ms. Renaissance Micro Infrastructure
& Realty Pvt. Ltd.

Mayur Ratilal Suchak

Pinkesh Dilip Thakkar

Dharmendra Jayantilal Suchak

Deepti Mayur Suchak

Ms. Renaissance Indus Infra (P) Ltd.

(Renaissance Industrial Smart City -PH II)

... Respondents.

MahaRERA Regn: P5170001395

Coram: Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Manoj Raicha

Respondents: Adv. Amjith M.A.

FINAL ORDER

20th March 2019.

The complainant Mr. Parth Bharat Suchak who holds the power of attorney of his father Mr. Bharat Ratilal Suchak has filed the complaint to contend that Mr. Bharat was one of the partners of the respondent no. 1, a partnership firm and when he retired from it, six



plinth lands bearing unit nos. A/IX/2, A/IX/3, A/IX/4, A/IX/5, & A/IX/6A in respondents registered project Renaissance Industrial Smart City - Phase-II situated on Survey nos. 36/4, 36/8, 38/14/3, 39/2, 39/4, 39/5, 39/6, 40/14/2, 49/2/3 of village Vashere, Taluka Bhiwandi District Thane were allotted to him. The registered agreement for sale to that effect had been executed on 10.12.2009. Condition no. 16 of the said agreement required the execution of the construction agreement (work contract) to be executed with the respondents for constructing pre-engineered steel portal framed rectangular building. Accordingly, the said agreement was also executed on 14.12.2009 and was registered. A grace period of six months was given to hand over the warehousing units on the plinth lands. Thus, the units were to be handed over up to 09.09.2010. The respondents failed to hand over the possession of the warehousing units. It was agreed by the parties that in case of delay the respondents would be liable to compensate Mr. Bharat Suchak for the loss of rent which was agreed at the rate of Rs. 10/- per sq. ft. per month till handing over the possession of the units. Therefore, the complainant has requested to direct the respondents to hand over the possession of the warehouse units. He also claims compensation for the period from 09.09.2010 till December 2017 amounting to Rs4,66,20,000/-.

2. The respondents have taken the plea that the complainant has been seeking the specific performance of the contracts executed under Transfer of Property Act under Specific Performance Act and this relief cannot be granted by this Authority because it can be granted



only by the Civil Court. They further contend that when Mr. Suchak retired from the partnership firm the subject property was agreed to be accorded to him by way of full and final settlement of his claim and therefore, the agreement dated 10.12.2009 came to be entered between him and the respondents. It was agreed by the said agreement that the complainant would be sold/allotted lands measuring 52,500 sq. ft. area by executing a conveyance deed after obtaining necessary permissions from the concerned authorities. The agreements show that the possession of the plots along with warehousing units is contingent upon execution of confirmation deed/conveyance deed and therefore, the complaint is immature as the confirmation deed/conveyance are not executed. Hence, they request to dismiss the complaint.

3. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether RERA applies to warehousing Units?	Affirmative.
2. Whether Real Estate Regulatory Authority has jurisdiction to entertain the complaint?	Affirmative.
3. Whether the respondents have failed to hand over the possession of warehouse units as agreed?	Affirmative.
4. Whether the respondents are liable to pay Compensation and hand over possession of the units?	Affirmative.



REASONS

4. There is no dispute between the parties that the warehousing units are to be constructed in Renaissance Industrial Smart City - Phase-II situated on Survey nos. 36/4, 36/8, 38/14/3, 39/2, 39/4, 39/5, 39/6, 40/14/2, 49/2/3 of village Vashere, Taluka Bhiwandi. The learned advocate of the respondents submits that RERA is not applicable to warehousing units because they are for industrial purpose. The respondents have received the certificate showing that their project is an industrial project. In order to appreciate this issue in proper perspective, it is necessary to refer to the definition of "apartment" defined by Section 2 (e) of RERA. It includes godown. Dictionary meaning of warehouse is, 'a building for storing goods. Warehouses are used by manufacturers, importers, exporters, wholesalers, transport businesses, customs, etc. ... In India, a warehouse may be referred to as a godown.' RERA applies to godowns and hence I find that this submission of respondents' advocate cannot be accepted.

5. The learned advocate of the respondents submits that agreement for sale had been executed as per the provisions of The Transfer of Property Act and Agreement for construction had been executed as per the provisions of Indian Contract Act, their specific performance under The Specific Relief Act can be granted only by civil court and not by the Authority. I do not accept this submission because Section 13 of RERA makes the provision regarding the agreement for sale and Section 19 (3) thereof entitles the allottee to



claim possession of apartment from the promoter. Though the agreements have been executed under Transfer of Property Act and Contract Act, MOFA & RERA do not disturb them. The only precaution these Acts have taken is regarding the mention of date of possession and registration. Section 88 of RERA does not bar the operation of any other law for the time being in force. But the provisions of RERA are in addition to them. Therefore, the agreements entered into by the parties can be enforced under the provisions of RERA. This issue has been cleared by the Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd.-v/s Union of India (W.P. No. 2737 of 2017). The jurisdiction of Civil Court is barred by Section 79 of RERA from entertaining any Suit in respect of any matter which the Authority is empowered by Act to determine. The reliefs claimed by the complainant can be granted by this Authority under Section 18 and 19 r/w Section 37 of RERA. Hence, the Authority has the jurisdiction to entertain this complaint.

6. The learned Advocate of the respondents submits that the land was not ascertained and only the proposed site was referred to in the agreement. After receiving necessary permissions, the confirmation/conveyance deed was to be executed. Hence, the complaint is premature. The six plinth lands bearing unit nos. A/IX/2, A/IX/3, A/IX/4, A/IX/5, & A/IX/6A in respondents registered project Renaissance Industrial Smart City - Phase-II situated on Survey nos. 36/4, 36/8, 38/14/3, 39/2, 39/4, 39/5, 39/6, 40/14/2, 49/2/3 of village Vashere, Taluka Bhiwandi District Thane had been agreed to be sold to Mr. Suchak. Hence, the plinth lands are



earmarked and they are ascertained. More than nine years have passed and the respondents have not disclosed about the permissions received by them from the concerned authorities though they refer to the certificate of their industrial unit. This conduct of the respondents is malafide. They cannot take the advantage of their own wrong namely their failure to bring the necessary permissions. Hence, I reject even this submission of the respondents.

7. I find that the agreements do show that the respondents agreed to give possession of units within 15 months from the date of agreement for sale dated 10.12.2009 i.e. on or before 09.03.2010. The construction agreement dated 14.12.2009 allows the respondents the grace period of six months, thus, the respondents were liable to hand over the plinth land with the constructed six warehouses up to 09.09.2010. Admittedly the respondents have not handed over the possession of the warehouses on agreed date. Hence, I record my finding to this effect.

8. Condition No. 4 of the construction agreement dated 14.12.2009 shows that the respondents agreed to compensate the complainant about the loss of rent at the rate of Rs. 10/- per sq.ft. per month i.e at the rate of Rs. 6,30,000/- per month. The respondents are therefore liable to pay the compensation to Mr. Bharat Suchak from the date of default till handing over the possession of the warehouses at the rate of Rs. 6,30,000/- per month. The respondents are liable to pay him Rs. 20,000/- towards the cost of the complaint. Hence, the following order.



ORDER

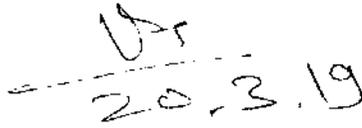
The respondents shall pay the compensation to Mr. Bharat Ratilal Suchak from 09.09.2010 till handing over the possession of the warehouses at the rate of Rs. 6,30,000/- per month.

The respondents shall hand over the warehouses to the complainant and execute their conveyance deed within twelve months from the order. Conveyance deed shall be executed at the cost of Mr. Bharat Suchak.

The respondents shall pay him Rs. 20,000/- towards the cost of the complaint.

Mumbai.

Date: 20.03.2019.


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