

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000055745.

Ravindra Padmakar Sarawate
Kavita Ravindra Sarawate

... Complainants.

Versus

Bhairav Realty
Disha Direct Marketing Services Pvt. Ltd.
(Baycastle)

... Respondents.

MahaRERA Regn: P52000006668.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: In person.

Respondents: Mr. Ganesh Iyer.

FINAL ORDER

11th December 2018.

The complainants have filed this complaint under Section 13 of RERA to seek direction against the respondents for executing and registering of two 1 BHK flats admeasuring 625 sq.ft. each in respondent no.1's registered project 'Baycastle' situated at Alibaug.

2. The complainants contend that they booked plot nos. 83, 84 by paying Rs.1 lakh and plot nos. 411-414 by paying Rs. 2 lakhs in the respondents' project 'Disha Direct' situated at Sarangpuri, Tal. Shahapur, Thane. The payment was made to their associate firm M/s. Yash Ventures Pvt. Ltd. which has been merged into Disha Direct Marketing Services Pvt. Ltd. Thereafter the complainants paid Rs. 21,48,900/- to M/s. Yash Infra Ventures P.Ltd. on 08.06.2010. Despite the payment, they failed to provide the plots. However, respondents agreed to transfer booking of the said



plots to ongoing project Baycastle situated at Alibaug. 'Baycastle' is being developed by M/s. Bhairav Realty hence they allotted two 1BHK flats admeasuring 625 sq.ft. each for the total consideration paid. However, Bhairav Realty neither executed the agreement for sale nor handed over the possession of the flats. Therefore, the complainant alleges respondents contravened Section 13 of RERA.

3. The respondent no.1 submitted when the plea was recorded that they are ready to execute the agreements for sale provided the complainants pay them Rs. 7.5 lakhs. The respondent no. 2 has failed to appear and therefore, the complaint proceeds exparte against them.


4. The respondent no. 1 have not filed their written reply. Their representative Mr. Ganesh Iyer and the complainant Mr. Sarawate have been heard.

5. Following points arise for determination, I record findings thereof as under:

POINTS	FINDINGS
1. Whether the complainants have paid the entire consideration of the flats no. D-306 and D-307?	Affirmative.
2. Whether the respondents are liable to execute and register the agreements of the flats in complainants' favour under Section 13 of RERA?	Affirmative.

REASONS

6. The contesting respondent no. 1 has not disputed the fact that the complainants booked six plots in their Disha Direct Project situated at Sarangpuri and the booking is shifted to 'Baycastle' which is being



developed by the respondent no. 1 Bhairav Realty. It is also not in dispute that the allotment letters of the flat nos. D-306 and D-307 have been issued wherein it is clearly mentioned that cost of each flat is Rs. 18,75,000/- exclusive of taxes and other charges.

7. Next question is, whether entire consideration of both the flats have been adjusted by the respondents or not. For this purpose, it is necessary to look at the brochure of the project in which it is mentioned that the project is conceptualised and marketed by Disha Direct Marketing Services Pvt Ltd. and I am told that Disha Direct Marketing Services Pvt Ltd is one of the partners of the respondent no. 1, though, no documentary proof thereof has been produced but it is not denied by respondent no.1 also. The complainants have relied upon the notice-reply sent by the respondent no. 2 to them (to their notice dated 03.12.2014). In Para-6 of the reply, the respondent no. 2 have specifically admits that "it is noted that flat cost of Rs. 18,75,000/- for each flat/unit has been adjusted against the plot cost which you have already paid at the time of booking of the aforesaid plots. Further in addition to flat cost as mentioned therein, you are bound to pay cost which shall be incurred for registration of agreement for sale and other expenses." Mr. Iyer submits that the respondent no. 1 have received only 30,00,000/-. The receipt thereof has been passed in complainants' favour by respondent no.1. Therefore, he claims that Rs. 7,50,000/- are due from the complainants. Once the respondent no. 2 who is the partner or marketing agent of the respondent no. 1 has acknowledged the fact that Rs. 18,75,000/- for each flat have been adjusted against the plot numbers D-306 & D-307, I find it necessary to believe the complainants when they say that they have paid entire amount of consideration. The liability of the complainants at the most is confined to the payment of taxes, legal charges, MSEB charges, maintenance charges, stamp duty and registration charges



as mentioned in the notice reply. The complainants are ready to pay the same.

8. When the cost of each flat is Rs. 18,75,000/- and the complainants have paid the entire amount of consideration, the respondent no. 1 was bound to execute the agreements for sale of flat nos. D-306 & D-307 of their project in complainants' names. They have failed to do so and thereby they contravened Section 13 of RERA. After taking into consideration the facts and the circumstances of the case, I do not find it necessary to impose penalty on the respondents under Section 61 of the Act for contriving Section 13. However, it is necessary to direct the respondents to execute the agreements for sale by mentioning that they have received the entire agreed consideration of the flats. Hence, the order.

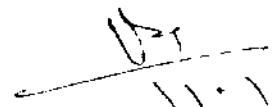
ORDER

The respondents shall execute the agreements for sale of flat nos. D-306 & D-307 in complainants' name by mentioning the receipt of the entire consideration, within a month from this order. The complainants shall bear other charges referred to in the order.

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

Mumbai.

Date: 11.12.2018.


11.12.18

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