

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

**Complaint No. CC006000000055459**

Nisar Properties Pvt Ltd

..... Complainant

**Versus**

Mr. Shaikh Haroon Rashid & Shaikh Abuzar Haroon Rashid

..... Respondent

MahaRERA Registration No. **P51800002124**

**Coram:** Dr. Vijay Satbir Singh, Member I, MahaRERA

Adv. Vyom Shah appeared for the complainant.

Mr. Sumit Kapure, C.A. of respondent appeared for the respondent.

**Order**

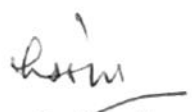
(22<sup>nd</sup> November, 2018)

1. The complainant promoter has filed this complaint seeking directions from MahaRERA to the respondents to pay all the dues as per the statement of dues and to pay the penal interest of Rs. 24,28,101/- on the delayed payment of consideration amount in respect of booking of their flat no. 703, in wing- B of the respondent's project known as 'Rajal- Om Jaishriram CHS Ltd' bearing MahaRERA Registration No. **P51800002124** at Kurla.
2. This matter was heard on 27<sup>th</sup> September, 2018 and after hearing the arguments of both the parties, the MahaRERA directed them to make their written submissions.
3. The complainant has argued that the respondents have booked the said flat in his project for a total consideration amount of Rs. 1,75,00,000/- which was to be payable as per the agreed payment schedule. The said consideration amount of exclusive of interest of any taxes, duties, dues, charges etc. As per the various clauses of registered agreement for sale dated 23-02-2016, the respondents are liable to pay service tax, VAT, GST, interest and penalty on taxes etc.,

4. The respondents disputed the claim of the complainant and argued that vide registered agreement for sale dated 23<sup>rd</sup> February 2016 the respondents agreed to purchase the said flat in the complainant's project at an agreed consideration of 1,75,00,000/-. As per clause No. 3.3 of the said agreement provides that 100% payment against brickwork and plaster which means against 50% work done on site the complainant promoter is claiming 100% sales value and has decided the monetary contribution on the basis of the flat area including the terrace which the purchaser has paid fully. The respondents stated that the complainant has charged Rs. 10 lacs in cash vide receipt dt. 27<sup>th</sup> November 2015 and another Rs. 15 Lacs on 2<sup>nd</sup> February 2016 which has been confirmed by him.
5. The respondents further argued that as per clause 3.9 of the said agreement for sale, the complainant may adjust any payment made by respondent against any payment due from respondents and that respondents has not paid service tax and VAT and claims that it is recoverable from respondents alongwith interest and penalty. As such the undischarged service tax and VAT liability is purely the burden and responsibility of the complainant and the complainant cannot hold the respondent responsible for his own default. The complainant is claiming additional consideration for increase in carpet area and clause 2.1 of the said agreement provides for variation of 5% of carpet area and the respondents demand that all the papers and documents with respect of claim of increase in the carpet area beyond 5% be submitted. The complainant received the full consideration before 2<sup>nd</sup> May 2016 and complainant managed to complete the building work by December 2017 and actual Building completion certificate was received on 17<sup>th</sup> January, 2018 and hence the builder has offered possession after a period of 2 years from the date of payment of full consideration. The complainant has intentionally not put any possession date in agreement for sale which is a breach of faith and understanding and has also

charged interest @ 24% to the purchaser which is not correct as per the provisions of RERA Act. The respondents therefore prayed for the relief that the flat area be considered as inclusive of the terrace and the credit for cash payments be acknowledged and the respondents is entitled to interest on account of pre payment of flat monetary consideration and compensation by way of interest from the complainant for delay in granting possession.

6. The MahaRERA has examined the submissions made by both the parties as well as the record. The complainant who is the promoter is seeking directions from MahaRERA to the respondent, to pay the statutory dues towards various government taxes etc. In this regard the MahaRERA feels that both the parties are bound to abide by the terms and conditions mentioned in the registered agreement for sale executed between them including the payment schedule mentioned therein. If there is a breach of any terms and conditions in respect of payment schedule, either party ~~are~~<sup>is</sup> at liberty to take appropriate action as per the said agreement. There is no explicit provision under the RERA Act, 2016 under which such relief can be considered.
7. With these observations, the complaint stands disposed of.

  
(Dr. Vijay Satbir Singh)  
**Member I, MahaRERA**