

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000535

SUMIT AGRAWAL

... Complainant.

Versus

1. M/s. VENUS DEVELOPERS
2. M/s. RUSTOMJEE EVERSHINE JOINT VENTURE ... Respondent.
MahaRERA Regn: P99000002430.

Complainant Represented by Himself.

Respondent Represented by Arun Pancikar Adv.

Coram: Hon'ble Shri B.D. KAPADNIS.

13th November 2017

Final Order

The complainant has filed this complaint u/s. 18 of the Real Estate (Regulation & Development) Act, 2016 (for short, RERA) for getting refund of the amounts paid by him to the respondent in the context of purchase of Flat No. 102, situated on first floor, Building No. 25, Avenue D, Global City, Virar (w), on the respondent's failure to deliver its possession on the agreed date namely December 2014.

2. Issue regarding maintainability of the complaint.

The respondent has taken the stand that the complainant booked flat no. 102 on the first floor of building no. 25, avenue D, Global city, Virar (W). This phase of the project has received the occupancy certificate on 29.07.2017. Therefore, this phase of the project has not been registered with MahaRERA u/s. 3 of RERA. He has brought to my notice the orders passed by the Hon'ble Chairperson MahaRERA in complaint nos. CC006000000000533 and CC006000000000615 dated 19th and 21st September 2017 respectively to contend that when the subject matter of the dispute is not the part of the registered



project, MahaRERA has no jurisdiction. The Flat booked by the complainant is not the part of the registered project hence he requests to dismiss the complaint.

3. I heard both the parties.

4. It is now necessary to refer to Section 3(1) of RERA Act. It prohibits the promoter from advertising, marketing, booking, selling or offering for sale or inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it situated within planning area without registering the real estate project. Its proviso is important in context of this matter which reads as under-

5. 'Provided that projects that are ongoing **on the date of commencement of this Act** and for which the completion certificate has not been issued the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act'.

6. The relevant portion of sub Section (2) reads as under-

'(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-

(a).....

(b) Where the promoter has received completion certificate for a real estate project **prior to commencement of this Act**;

(c).....

Explanation: For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

7. Rule 4 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures On Website) Rules, 2017 provides that the promoter of an ongoing real estate project in which all buildings as per sanctioned plan have not received occupancy certificate or completion certificate, as the case may be provided by clause (b) of subsection (2) of Section 3, shall be required to submit application for registration for each such phase of the project, **within a period of three months from the date of commencement of Section 3.**

8. Section 3 of RERA has come into force on 1st May 2017 in Maharashtra State.



9. On plain reading of Section 3 and Rule 4 cited supra it becomes clear that all ongoing projects to which completion or occupancy certificate were not given on the day of the commencement of Section 3 of RERA i.e. on 1st May 2017, were required to be registered within the period of next three months. This window period of three months was given for submission of the application for registration. This period of three months was not the period for extension of the time to obtain the completion or occupancy certificate.

10. Section 2(g) defines Completion certificate to be issued by Competent Authority certifying that the project is developed according to the sanctioned plan. Section 2(zf) defines occupancy certificate issued by the Competent Authority permitting the occupation of any building, as under local laws which has civic infrastructure such as water, sanitation, electricity. Rule 4 cited supra lays down that when completion certificate or occupancy certificate is received no application for registration of project is required. Hence though completion certificate is not produced, it does not make any change in the facts and circumstances of the case because issuance of occupancy certificate is a subsequent stage as compared to completion certificate.

11. The occupancy certificate shows that it has been issued on some terms and conditions. It is not necessary for me to go into the details of the matter as I can sit in appeal over the authority which issued the occupancy certificate.

12. Now it is also necessary to look at Section 5 of RERA Act which relates to the grant of registration. Sub clause (3) of Section 5 shows that 'the registration granted under this section shall be valid for a period declared by the promoter under sub clause (C) of clause (l) of sub section (2) of Section 4 for **completion of the project or phase thereof as the case may be**'.

13. So within the window period of ninety days the project was completed and therefore, the registration of the project pertaining to the building where the flat booked by the complainant is situated was simply an empty formality as on the very day of the registration, the registration would have come to an end. In this scenario the respondent is justified in not registering the phase of which he received the occupancy certificate.

14. On this back drop when I go through the documents placed on record by the respondent, I find that the occupancy certificate has been issued on 29.07.2017 in respect of Avenue D, RD building-25 having 47 residential flats. The registration certificate issued in favor of the respondent bearing no. P99000002430 does not cover the building no. 25 of Avenue D which consists of the complainant's booked flat no. 102.



15. In result, I hold that the flat no. 102 booked by the complainant is not the part of any project registered with MahaRERA Hence, this Authority has no jurisdiction to entertain this complaint. It is dismissed.

A handwritten signature in blue ink, followed by a horizontal line and the date 13.11.17.

Mumbai
Date: 13.11.2017.

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