

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

COMPLAINT NO: CC005000000022943

Pravin S. Nadkarni.

... Complainant.

Versus

Clover Developers Pvt. Ltd.
Everjoy Co-op. Hsg. Soc. Ltd.
Clover Highlands CHS Ltd.
(Clover Highlands)

... Respondents.

MahaRERA Regn: P52100005703.

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

Appearance:

Complainant: In person.

Respondent No.1: Adv. Priyanka V.
Pandit.

Final Order

28th January 2020.

Heard the complainant and the learned advocate of the respondent no. 1 Ms. Pandit.

2. I have already passed interim order in the matter which discloses the relevant facts of the complaint and the issues raised therein. Therefore, to shorten this order, I reproduce the interim order which reads as under.

"Order on the application of the respondents for dismissing the complaint.

The respondent no. 1 is developing a land measuring 71,000 sq.mtrs. bearing survey nos. 25/1-4 of village Kondhwa Khurd, Pune. The land belongs to respondent no. 2, Everjoy CHS. In fact, it is a piece of larger land. The sanctioned plans of the said piece of land is revised from time to time and now the last revised plan bearing no. CC/0638/18 is in force. The respondent no. 1



has completed eighteen residential buildings and several row houses consisting of 438 units. The co-operative housing society of those allottees is formed which is respondent no. 3. According to respondent no. 1, they have constructed non-residential building Clover Metropole on the said land. The Clover Metropole is retained by respondent no. 1. The open space admeasuring 7010.75 sq.mtrs. is on the larger land where recreational infrastructure facilities and amenities meant for common use of all stake holders of the larger land including that of Clover Metropole are provided and it is referred to as common recreational area and it is controlled by the respondent no. 3. The respondent no. 1 has retained another portion of the land whereupon some recreational infrastructure facilities and amenities are put up and this portion is under the control of the respondent no. 1. Building no. 10 (pt) is constructed on the larger land and building nos. 8 & 9 are under construction in the retained recreational area as per the sanctioned plan and permission accorded. The building nos. 8 & 9 are therefore, registered under RERA.

2. The complainant is the allottee of flat no. 2144 of building no. 21 as per the agreement dated 07.07.2005. On 28.07.2005 the possession of his flat is given with the possession letter under the agreement for sale reserving the respondent no. 1's right to balance development by consuming full FSI and TDR.

3. The respondent no. 1 contend that the complaint is not maintainable. The complainant is not the allottee of the real estate project (building nos. 8 & 9). The respondent no. 3 including the complainant allowed the respondent no. 1 to continue balance development in the larger land and to get the conveyance only upon the completion of all the balance development. According to them, in the month of February 2018 some members of the society restrained the respondent no. 1 for accessing the retained recreational area and therefore, the controversy has arisen. Some litigations before the Civil Court and the High Court have been litigated and are disposed of in respondent no.1's favour. However, the Civil Suit No. 867 of 2018 filed by some members of the respondent no. 3 in respect of the subject matter is pending before the Civil Court at Pune, where the respondent

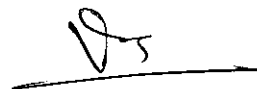


no. 3 is also a party. Since the same subject matter is sub-judice before the Civil Court, this complaint is not maintainable.

4. The complainant has filed the reply to contend that any aggrieved person can file the complaint against the promoter under Section 31 of RERA. He is an aggrieved person because the building nos. 8 & 9 are constructed on the area of common amenities and he being one of the allottees of building no. 21 has undivided interest therein. According to him, the respondent no. 1 has consumed entire FSI and therefore, the construction of building nos. 8 & 9 is illegal. He further contends that the respondent no. 1 & 2 have violated Rule 3 (d), 3(e), 4(3)(1), Rule 9(2)(iii)(b) of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and disclosures on Website) Rules, 2017.

5. I have heard the complainant in person and the learned advocate of the respondent no. 1. It appears that some of the members of the respondent no. 3 have filed a Regular Civil Suit No. 867 of 2018 to contend that the subsequent revision of plans granted by the Pune Municipal Corporation are illegal and there is no FSI available for constructing building nos. 8 & 9. However, they have failed to get temporary injunction to restrain the respondent no. 1 from constructing those buildings and selling them. Hon'ble High Court has refused to interfere with the order. Main suit is pending before the civil court.

6. I find that any aggrieved person under Section 31 of RERA can file the complaint. It is the contention of the complainant that he being one of the allottees of building no. 21 has undivided share/interest in the land reserved for common amenities. Building nos. 8 & 9 are being constructed on the land of common amenities and therefore, his interest is involved in the said land. The complainant wants to vindicate his rights in respect of the area of the common amenities under Maharashtra Ownership Flats Act, 1963 (MOFA). Some allottees of the flats constructed on the larger land have filed the civil suit referred to above in civil Court to vindicate their right regarding the land provided for common amenities. Civil Court is the proper forum under MOFA. Society of the



allottees is one of the parties to that suit. Complainant is member of it and the issue relating to the land under common amenities pertains to the society vis-a-vis its members including the complainant. Therefore, I find that the complaint relating to this issue is not maintainable. The tendency of forum shopping needs to be discouraged. If the complainant wants to put up his case which in his opinion cannot be presented by the society before the court, he is at liberty to file the application to implead himself as party thereto. Therefore, I do not want to enter into the merits of the case to examine the issue of the consent alleged to have been given by the society for the balance development / consumption of entire FSI of larger land at the hands of the Respondent No. 1.

I have noted the following facts. The respondent no. 3 filed consumer complaint no. APDF/467/2016 and Civil Suit No. 902 of 2018 but withdrew it. Writ Petition No. 13588.2018 filed by some of the members of the society Ashwini Kumar Diwan & Ors. Has been dismissed.

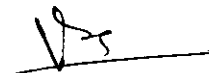
It is also a fact that the application for deemed conveyance is filed by the respondent no. 3 society before competent authority and the complainant has also applied as intervener in the said proceedings. Since the conveyance deed is not executed, the title of the land has not passed to the society.

Building No. 22 where the complainant's flat is situated has been completed in the year 2007 and the possession of the flat has also been given to the complainant in the year 2007. Therefore, these properties and the dispute relating to them cannot be brought within the jurisdiction of the real estate authority by indirect method of filing this complaint alleging that the building nos. 8 & 9 are being constructed on the land meant for common amenities that too, when entire FSI has already been consumed. It is the jurisdiction of the planning authority to ascertain whether there is FSI of the land for constructing the project while sanctioning the plans. This authority restrains itself from examining those issues because the remedy is elsewhere.



Complainant contends that the respondent no. 1 has not complied with rule 3(2)(d) of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interests and Disclosures on website) Rules, 2017. These rules are hereinafter referred to as rules 2017. This rule provides that where the promoter is not owner of the land on which development is proposed, a copy of collaboration agreement, development agreement, joint development agreement or any other form of agreement, as the case may be entered into between the promoter and such owner, reflecting the consent of the owner, on the land proposed to be developed shall be furnished. Complainant has brought to my notice by showing 7X12 extract, the development agreement, respondent no.1's declaration that the land under development belongs to the respondent no. 2. In this context when I visited the webpage of the project, I find that the name of the Respondent No.2 which is the owner of the land is not mentioned as the promoter. Similarly, the respondent no. 1's agreement entered into with the respondent no.2 has not been uploaded. Respondent No. 2 by executing the development agreement has caused the project to be constructed. Hence, it comes under definition of promoter. To this extend I find it necessary to give directions to the respondent nos. 1&2 to mention the name of respondent no. 2 as promoter and to upload the development agreement on the webpage of the project.

The complainant complains that the respondent no. 1 has not furnished the information relating to the encumbrances in respect of project land and thereby failed to comply with rule 3(2)(e) of rules ,2017. Encumbrance means a mortgage or other charge on a property, or the fact of a property having a mortgage, etc.: An encumbrance is a legal claim on a property that affects the owner's ability to transfer the ownership of the property. Complainant refers to the allottees of the building constructed and completed on the larger land and submits that their encumbrances have not been mentioned by the respondent no. 1 while registering the project. I find that those buildings are completed and their possession has also been handed over to the society/ members long back. Their



holding cannot have said to be an encumbrance to be mentioned under rule 3(2)(e) of rules ,2017. Hence, I do not find any substance in this allegation.

The complainant alleges the noncompliance of rule 4(3)(a) of rules, 2017 which requires promoter to disclose the number of apartments sold or allotted to the allottees, the size of apartment based on carpet area or super built-up area. The promoter has to furnish the information of the registered project. The registered project relates to the building 8&9 and therefore, the promoter is required to disclose the information relating to the number of apartments situated in building numbers 8 & 9, sold or allotted to the allottees, the size of apartment based on carpet area or super built-up area. This information has been provided hence, there is no substance in this allegation.

The complainant alleges the noncompliance of rule 9(2)(iii)(b) of rules, 2017 which requires promoter to form the society and transfer title by executing conveyance deed under section 17 of RERA.

7. The complainant has also referred to the contravention of the Rules mentioned above and those facts needs to be ascertained. Hence, the complaint is maintainable only in respect of on noncompliance/ contravention of rule 3(2)(d), 3(2)(e), 4(3)(1), 9(2)(iii)(b) of rules, 2017 and is confined to the registered project."

3. Therefore, I am restricting this order to the contravention of the above rules.

4. The complainant contends in the context of 3(2)(d) of Rules, 2017 that promoter has not submitted the land development agreement entered with the landlord (Respondent No.2) on the website of MahaRERA.

5. The respondent no. 1 submits on this point that they have referred to all the land development agreements in their title report and those being public documents can be viewed by the public. They could not



upload the development agreements because of the limited space available on MahaRERA website.


6. Rule 3(2)(d) requires *the promoter to furnish the information and documents namely collaboration agreement, development agreement, joint development agreement or any other form of agreement entered into between the promoter and such owner, reflecting the consent of the owner of the land.*

7. The learned advocate of the respondent no. 1 submits that the respondent no.1 is ready to upload the agreements if they are required to be uploaded. It is true that the space of 1MB is available for uploading an agreement. However, this space can be extended by pressing 'add' button to make further space of 1MB available. In this manner as many documents as are required can be uploaded. Therefore, I direct the respondent no. 1 to upload all the agreements which are required to be uploaded by Rule 3(2)(d) within a month from this order.

8. Complainant contends about contravention of rule 3(2)(e) that promoter did not mention encumbrance such as "Failed to mention Total Undivided Proportionate Rights in the Title/ common area, failed to mention Status of Conveyance, failed to mention formation of society on the plot of real estate project, failed to mention how much common area he has available for the new buyer's u/s 11(4)(f) in the new buildings under construction.

9. The respondent no. 1 in this context contend that the encumbrances in respect of the land upon which the construction is being made have been mentioned along with details of ongoing litigations.

10. Rule 3(2)(e) requires *the promoter to furnish the information relating to the encumbrances in respect of the land where the real estate project is purposed to be undertaken and details regarding the proceedings which are sub-judice (if any) in respect of such land.*



11. 'Encumbrance' in law means a mortgage or other claim on property or assets. The conveyance deed has not been executed in favour of the society of the allottees and the matter of deemed conveyance is pending. I find that the respondent no. 1 proposed to provide the common amenities which have already been constructed for completed buildings and row houses. It means that the allottees of the registered project will be the beneficiaries along with the allottees of the building and row houses which have already been occupied with occupancy certificate. Therefore, I agree with Mr. Nadkarni that the respondent no.1 must make it clear that the common amenities already constructed will be shared by the allottees of the registered project. I direct the respondent no. 1 to mention the same on their webpage.

12. Complainant in the context of rule 4(3)(a) submits that it needs to be mentioned as to how many apartments are sold & the area sold in the real estate project. This again leads to creation of confusion relating to undivided proportionate rights in the Title/Common area.

13. The respondent no. 1 submits that they have furnished the information of all the units sold by them and this information is uploaded on the website of MahaRERA.

14. Rule 4(3)(a) requires the promoter to mention the number of apartment sold and allotted to allottee and disclose the size of the apartment based on the carpet area. This information has been furnished by the respondent no.1. Hence, there is no substance in the allegation.

15. The complainant with reference to rule 9(2)(iii)(b) contends that it provides, promoter shall execute the conveyance of the entire undivided land underneath all buildings/wings constructed in a layout jointly or otherwise within 3 months but the respondents have not complied with it.



16. The respondent no. 1 submit that the registered project is proposed to be completed on or about 31.12.2025. The respondent no. 1 intend to form an Apex body or federation for all societies of larger land. It denies the violation of the rule.

17. The rule lays down that -

(b) In the case of a layout, if no period for conveying the title of the Promoter in respect of the entire undivided or inseparable land underneath all buildings/ wings along with structures of basements and Podiums constructed in a layout is agreed upon, the Promoter shall execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly or otherwise within three months from the date on which the Apex Body or Federation or Holding company is registered or, as the case may be, the association of the allottees is duly constituted or within three months from the date of issue of occupancy certificate to the last of the building or wing in the layout, whichever is earlier.

18. In view of the facts of the case, I have already recorded that the society of the allottees have already moved the competent authority for deemed conveyance under MOFA. Hence, I refrain myself from recording any finding and issuing any direction on this issue because the matter is already sub- judice before the competent authority.

19. The complainant contends that the promoter did not mention encumbrances such as total undivided proportionate rights in the title/ common area, they failed to mention status of conveyance, they failed to mention formation of society on the plot of real estate project, they failed to mention how much common area he has available for the new buyer's u/s 11(4)(f) in the two new buildings under construction.

20. I have already given the direction regarding the encumbrances and hence it is not necessary for me to discuss this issue again. I have also mentioned that the allottees have already moved the competent



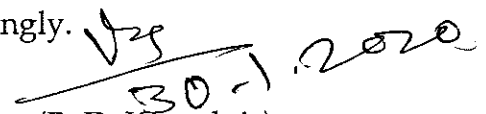
authority for getting deemed conveyance. The issues regarding available FSI and the last sanctioned plan of building no. 8 & 9 have already been raised before the competent Civil Court and hence I close them.

To conclude, I hold

1. The Jurisdiction of MahaRERA is restricted and is limited to contravention or violation of RERA, Rules and regulations framed thereunder in the context of registered projects only.
2. The project or part of the project completed of which the completion certificate is obtained before RERA came into force does not come under the umbrella of RERA.
3. The real estate regulatory authority controls only the registered projects or the projects which are eligible for registration under section 3 of RERA.
4. The respondent no. 1 shall upload all the agreements which are required to be uploaded by Rule 3(2)(d) within a month from this order.
5. The respondent no.1 shall make it clear on their webpage that the common amenities already constructed will be shared by the allottees of the registered project with the allottees of the completed buildings and row houses.
6. Respondent nos. 1&2 shall mention the name of respondent no. 2 as promoter.
7. The issues regarding available FSI and the last sanctioned plan of building no. 8 & 9 have already been raised before the competent Civil Court and hence, the issues are closed.
8. The complaint is disposed off accordingly.

Mumbai.

Date: 30.01.2020.


(B. D. Kapadnis)
Member II, MahaRERA,
Mumbai.