

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

Complaint No. CC006000000044464.

Skyline Construction Co. Complainant.

V/s.

Monica Singh.
(Sub plot-D, CTS No.101/B) Respondents.

MahaRERA Regn: P51800007873.

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

Appearance:

Complainant: Adv. Subit Chakraborti i/b
Vidhi Partners.
Respondents: Adv. Shweta Merchant.

FINAL ORDER
9TH August 2018.

The complainants have been seeking directions against the respondent who is their allottee in respect of flat D-2404 of their registered project 'RNA EXOTICA' under Section 19(6) and 19(7) of Real Estate (Regulation and Development) Act 2016 to pay the arrears of the consideration of the flat and interest thereon. They are also seeking the direction directing the respondents to execute the agreement for sale under Section 13 r/w under Section 37 of the Act.

2. The respondent has raised the issue of maintainability of the complaint, hence learned advocates of both the parties have been heard on this issue.

3. It is not in dispute that the complainants have issued allotment letter dated 11.08.2011 allotting flat no. D-2404 to her for total consideration of



Rs. 1,75,37,850/- It is also not in dispute that up till now she has paid the complainants Rs. 88,02,477/- which is 50% of total consideration. It is also a fact that the agreement for sale has not been executed so far, but the complainants have been demanding the balance of consideration Rs. 50,16,164/- accrued so far which was to be paid as per the slabs mentioned in the allotment letter.

4. The learned advocate of the respondent brings to my notice Section 4 of Maharashtra Ownership Flats Act which provides that the promoter shall not accept more than 20% of the sale price without entering into written agreement for sale. Section 13 of RERA also provides that the promoter cannot accept more than 10% of the cost of the apartment without first entering into written agreement for sale. So the complainants have accepted Rs. 88,02,477/- which is 50% of the total consideration without entering into the agreement for sale with the respondent in contravention of these provisions. Hence on this count, I find that their complaint filed under Section 19(6) and 19(7) is not maintainable.

5. The complainants have also sought the direction against the respondent for execution of the agreement for sale. The learned advocate of the respondent brings to my notice that in expression of interest form, there is mention of allotment of two car parking spaces and the said document is forged wherein only one car parking space is shown. There is also an issue regarding the date of possession because the respondent contends that her flat is situated on 24th floor whereas the complainants have commencement certificate upto 21 floors and the work beyond 21st slab has stopped after March 2015. But these are the merits of the matter which cannot be gone into at this stage. To conclude, I hold that the complaint is maintainable under Section 13 r/w Section 37 of RERA.

6. Only issue that needs to be considered is, the complaint is filed in Form B and it is addressed to the Adjudicating Officer. According to the learned advocate of the respondent, the dispute arising out of Section 13

cannot be adjudicated upon by Adjudicating Officer and hence, the complaint in the present form is not maintainable for seeking the said relief.

7. I want to put on record that I have been appointed as a Member of MahaRERA and since I have the qualification to work as Adjudicating Officer, the Authority has appointed me as Adjudicating Officer also. Hence, though the complaint under Section 19 is not maintainable at this stage, the complainant under Section 13 r/w 37 is very well maintainable under RERA. Only because the complainants have filed the complaint by using Form-B, their complaint cannot be thrown away on technical ground. Therefore, I hold that the complaint is maintainable before me as the member of MahaRERA, so far as the contravention of Section 13 r/w Section 37 of RERA is concerned. Hence, the order.

ORDER

The complaint shall proceed under Section 13 r/w Section 37 only.

The complaint for contravention of Section 19 (6) (7) is dismissed.

Mumbai.

Date: 09.08.2018.

A handwritten signature in black ink, appearing to read 'B. D. Kapadnis' with a date underneath.

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