

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI
COMPLAINT NO: CC006000000001389

Gaurav Makkar ... Complainant.

Versus

Shining Sun Constructions
(Marble Arch) ... Respondents.

MahaRERA Regn: P52000013234

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

Appearance:

Complainant: Adv. Mr. Sadanand D.Desai.

Respondents: Through Mr. Liyakat Kalsekar.

Final Order

23rd March 2018.

The complainant complains that he has booked flat no. 702 in respondents' registered project Marble Arch situated in Sector 14 Panchanand, Taloja, New Bombay. Though the respondents received more than 10% of the total consideration of the flat, they failed to execute the agreement for sale in complainant's favour and thereby contravened Section 13 of Real Estate (Regulation and Development) Act, 2016 (RERA.). The complainant further complains that they have failed to deliver the possession of the flat in December 2013 as agreed and therefore, the complainant seeks the refund of his amount with interest.

2. The respondents have pleaded not guilty but they have not submitted any explanation. To-day, when the matter is for hearing, nobody



has appeared on behalf of respondents. Heard the learned advocate for complainant.

3. Following points arise for determination. I record my finding thereon as under:

Points	Findings
1. Whether the respondents have failed to execute the agreement for sale and register it even after receiving more than 10% of total consideration of the flat No. 702?	Affirmative.
2. Whether it is necessary to issue direction to execute and register agreement for sale and to impose penalty under Section 61 of the Act?	Affirmative.
3. Whether the complainant is entitled to get refund of his amount on respondents' failure to deliver possession on the agreed date under Section 18 of the Act?	Negative.

REASONS

4. The complainant has brought to my notice that total consideration of the flat was Rs. 20,75,028/- and the complainant has paid the respondents Rs. 19,82,065/- but the respondents have not executed the agreement for sale and registered it.

5. The Section 13 of RERA prevents the promoter from accepting a sum more than 10% of the cost of the apartment without first entering into written agreement for sale and register it. It was possible for the respondents to execute the agreement for sale even after RERA coming into force but they have not executed it. They have been attending matter from last 2 ½ months but they have not executed the agreement, though they are aware of the legal requirement. The opportunity was given to the respondents to amicably settle the issue but the respondents have not responded to it. After taking into consideration all these facts especially the



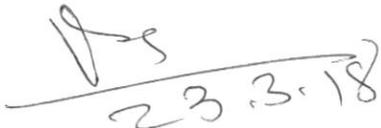
conduct of the respondents, to meet the ends of justice it is necessary to direct the Respondents to execute the agreement for sale in complainant's favour by the end of March 2018 and register it by imposing penalty of Rs. 50,000/- u/s 61 of RERA.

6. So far as refund of amount with interest and or compensation sought by the complainant is concerned, I find that it requires the agreement for sale, allotment letter cannot be treated as agreement for sale for the purpose of Section 18. For this purpose, I rely upon three judge bench decision of the Hon'ble Supreme Court passed in Hansa V. Gandhi-Vs-Deep Shankar Roy - AIR 2013(SC)2873. In this report Supreme Court has observed that the allotment letter cannot be treated as agreement for sale. Hence, the complainant is not entitled to get any relief under Section 18. In result, the order.

ORDER

1. The respondents shall execute the agreement for sale in complainant's favour of flat No. 702, Marvel Arc situated at Taloja, New Bombay by the end of March 2018.
2. The complainant shall co-operate with the respondents by paying the stamp duty and registration charges.
3. The respondents shall pay Rs. 50,000/- towards penalty under Section 61 of the RERA.
4. The complainant's claim for refund under Section 18 of the Act is hereby rejected.
5. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

Mumbai.
Date:23.03.2018.


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