

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000068165

Anshul Gupta ... Complainant

Versus

Realgem Buildtech Private Limited
MahaRERA Regn. No. P51900003268 ... Respondent

Corum:
Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Vikram Grewal, Adv. a/w Mr. Manal Dhanami, Adv.
Respondent was represented by Ms. Gayatri Tikale, Authorised representative a/w Mr. Abir Patel, Adv. (i/b Wadia Ghandy & Co.).

Order

March 27, 2019

1. The Complainant has stated that he has booked an apartment bearing no 5401-A in the Respondent's project situated at Prabhadevi, Mumbai via an allotment letter dated January 25, 2011. Further, he stated that he has paid up to 50% of the consideration price for the said apartment and that the Respondent had promised to handover possession by December, 2015 but has failed to do so till date. The Complainant stated that he received an email from one Mr. Zubin Patel informing the Complainant that the said project was taken over by one Rustamjee/Kingmaker Developers Private Limited. The Complainant alleged the said transfer by the Respondent to Rustamjee/King Maker Developers Private Limited of the project is a clear violation under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*). Therefore, he *interalia* prayed the Respondent be directed to refund the amount paid along with interest; cancel the registration certificate granted to the Respondent and direct the Respondent to deposit a sum amounting to



5% of the cost of the entire project or any such amount as this Hon'ble Authority deems fit as penalty for contravention of the provisions of the said Act.

2. The learned Counsel for the Respondent submitted that the Respondent had issued the allotment letter to the Complainant and that Rustomjee/ King Maker Developers Private Limited are only the development managers for the said project. Further, he submitted the Respondent has not transferred/ assigned his rights as a promoter under the provisions of section 15 of the said Act. Therefore, he submitted that the Respondent, 'Realgem Buildtech Private Limited' who has registered the project with MahaRERA, continues to be the Promoter for the said project and the agreement for sale for the said apartment will be executed by the Respondent only.

3. Section 15 of the said Act reads as follows:

15. (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation. – For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

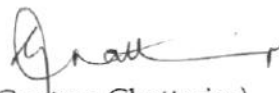
Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in



case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

Since the Respondent has not transferred or assigned his rights as a Promoter for the said project to a third party, there is no violation of section 15 of the said Act. Hence, the prayer made by the Complainant cannot be allowed under the provisions of the Act.

4. In view of the above facts, if the Complainant intends to continue in the said project, the parties are directed to execute and register the agreement for sale as per provisions of section 13 of the said Act and the rules and regulations made thereunder within 30 days from the date of this Order.
5. Alternatively, if the Complainant intends to withdraw from the said project, then such withdrawal shall be guided by the terms and conditions of the said Allotment Letter.
6. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA