BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.
COMPLAINT NO: **CC006000000022836**

Bhailalbhai Danabhai Parmar ... Complainants.

Versus

M/s. Raj Builders & Developer
Rajesh Arvind Surti ... Respondents.
(Raj Residency)

MahaRERA Regn: **P51800002739**

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

Appearance:
Complainant: Adv.Mr. Deepak Malekar.
Respondents: In person.

FINAL ORDER
9th May 2018.

The complainant contends that he booked flat no. 601, B-Wing in saleable component of respondents' SRA project Goregaon Navjagruti Co.Op. Housing Society, M.J. Road, Goregaon (West), Mumbai (Raj Residency). The respondents failed to execute the agreement for sale even after receiving more than 10% of the consideration and therefore, he requests to direct the respondents to execute and register the agreement for sale in his favour under Section 13 of Real Estate (Regulation and Development) Act, 2016 (RERA). The complainant further contends that even after issuing the allotment letter of flat no. 601 to him, the respondents entered into an agreement for its sale with Mr. Ramesh Trivedi & Mrs. Yashoda Trivedi and thereby indulged into fraudulent act and practised unfair practice.

2. The respondents plead not guilty. They have filed the reply to contend that they issued provisional allotment letter dated 16.03.2009 in complainant's favour on the complainant's promise that he shall strictly comply with terms and conditions of allotment letter. The complainant made initial payment of Rs. 4,11,000/- and thereafter did not pay any money to the respondents. Rs. 6,85,000/- became due towards 4th instalment on completion of the slab. The complainant did not pay it though several reminders were sent to the complainant. On the contrary, the complainant asked the respondents to refund his amount. Since the complainant did not follow the payment schedule, the allotment letter stood cancelled. The complainant is the Secretary of Goregaon Navjagruti Co.Op. Housing Society and therefore, he used to come in the contact of Respondent No. 2 very frequently. Therefore, sometime in or about September 2013 the respondents handed over the draft agreement to the complainant and asked him to pay the stamp duty, service tax and VAT immediately. But the complainant did not pay the same and did not pay Rs. 6,85,000/- which became due. Since the complainant claimed refund of his amount, the respondents forfeited its 50%. The respondents issued a cheque dated 22.06.2016 in the name of complainant and dated 17.06.2016 in the name of complainant's wife Smt. Pushpaben each for Rs. 1,00,000/-. The complainant received this payment. He also collected remaining amount of Rs. 5,500/- in cash. Therefore, the respondents contend that the complainant is no more an allottee and he is not entitled to get any refund.

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

POINTS	FINDINGS
1. Whether the complainant is 'allottee' and MahaRERA has jurisdiction to entertain this complaint?	Affirmative.
2. Whether the respondents have failed to execute and register the agreement for sale even after receipt of	Affirmative.

	more than 10% of the total consideration of flat no. 601 and thereby contravened Section 13 of RERA?	
3.	Whether the respondents entered into fraudulent act and practised unfair practice by reselling flat No. 601 to Mr. Ramesh Trivedi & Mrs. Trivedi by executing agreement for sale and registering it?	Affirmative.
4.	What order?	Refund of amount with interest.

REASONS

4. There is no dispute between the parties that the complainant booked flat no. 601, B-Wing situated in saleable component of the respondents' project and the respondents executed the provisional allotment letter dated 06.03.2009 on receiving Rs. 4,11,000/- from the complainant. The respondents have taken the stand that even after casting of a slab and even after receiving the demand letters, complainant did not pay them Rs. 6,85,000/- which became due and therefore, by letter dated 12.07.2011 they have cancelled the allotment. The learned advocate of the complainant submits that the demand letters show the address of the building which had been demolished by the respondents in the year 2009 itself. Therefore, these reminders upon which the respondents are relying upon were never sent to the complainant. He also submits that the signatures purported to be that of the complainant as recipient of the letters are his forged signatures. He has taken me through various documents to convince me on this point. However, I do not find it necessary to go into its details because the respondents themselves have mentioned in their reply that somewhere in September 2013 they have handed over the draft of agreement for sale to the complainant and asked him to pay stamp duty, service tax and VAT. This conduct of the respondents therefore, shows that they waived the letter of cancellation dated 12.07.2011. This conduct of the

respondents' further shows that the parties were labouring under the impression that the allotment letter/ booking of the flat was in force.

5. The respondents have referred to the payment of Rs. 2,05,500/- made after cancellation of the allotment letter. According to the respondents, they paid Rs. 2,00,000/- by cheques issued in the names of complainant and his wife Pushpaben separately. The learned advocate of the complainant has falsified this contention of the respondents by pointing out the agreements executed by the respondents with Mrs. Pushpaben in respect of room no. C/10 and with the complainant in respect of room no. D/11 of the old building whereby they agreed to pay compensation to complainant and his wife due to the hardship faced by them on account of demolition of the old building. He has also pointed out the receipts dated 07.06.2016 passed by the complainant and his wife that each received Rs. 1,00,000/- on account of advanced rent. The respondents have not therefore, proved that they refunded part of amount of the complainant as contended by them. In view of this, I find that the complainant being a buyer comes under the definition of the allottee. The complainant complains that the respondents are guilty of contravening or violating the provisions of Section 7 & 13 of RERA. Hence I find that this Authority has jurisdiction to entertain this complaint under Section 31 of RERA.

6. The copies of allotment letter produced by the parties shows that the respondents agree to sell flat no 601 to the complainant for Rs. 13,70,000/- and complainant paid Rs. 4,11,000/- against the value of the flat. After coming of RERA into force the respondents are liable to execute the agreement for sale of the said flat in complainant's favour under Section 13 of RERA.

7. The complainant himself has produced the copy of registered agreement for sale dated 31.12.2013 executed by the respondents in favour of Mr. Ramesh Trivedi & Mrs. Yashodha Trivedi showing that the

respondents agreed to sell flat no. 601, B-wing, 6th floor of their project for Rs. 52,50,000/-. Hence, I find that these facts are sufficient to prove that the respondents are guilty of practising unfair practice and they indulged in fraudulent act within the meaning of Section 7 (c) & (d) of RERA.

8. The learned Advocate of the complainant requests to direct the respondents to execute the agreement for sale for flat no. 601, B-Wing in complainant's favour and he relies upon the exparte order passed by this Authority in Mohanlal Mistry - vs- Mahesh Naik, wherein the respondent is directed to execute and register the agreement for sale. Another case is that of Vinod N. Tejwani- v/s- Runwal Constructions. In this case also the respondent was directed to execute the agreements for sale in favour of the allottees. In these cases, there was no issue regarding the execution of the agreements of the booked flats in favour of subsequent purchasers and therefore, these two judgements are not applicable to the facts of the case. However, there is much confusion on the concept of precedent, hence I take this opportunity to deal with this legal aspect.

9. Article 141 of the Constitution of India declares that the law declared by the Supreme Court shall be binding on all the courts within Territory of India. Hence the judgements of the Supreme Court are binding on all Governments, tribunals, institutions and the subjects of the country.

10. There is no express provision in the Constitution of India or in any law for the time being in force to make the decision of the parent High Court binding on the Subordinate Courts. Therefore, the Supreme Court itself has declared the law on this point in M/s. East-India Company Ltd.,Culcutta-vs-Collector of Culcutta, AIR 1962 (SC) 1893. The Supreme Court has held that under Article 215 of Constitution of India, every High Court shall be a Court of records and shall have all the powers of such Court including the power to punish for contempt of itself and its subordinate courts. Under Article 226, it has plenary power to issue orders

of writs for enforcement of fundamental rights and for any other purpose to any person or authority including appropriate government within its territorial jurisdiction. Under Article 227 it has jurisdiction over all courts and tribunals throughout its territories to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which High Court has superintendence can ignore the law declared by that court and start proceeding in violation of it. Therefore, the decision of the parent High Court is binding on all the subordinate courts and tribunals working under its territory. The law has been clarified by Five Judge Bench of the Hon'ble Supreme Court in Central Board of Dawoodi Bohra Community - vs - State of Maharashtra AIR 2005 (SC) 752 wherein rule of judicial discipline and propriety has been considered. The Supreme Court has held that in case of conflict of decisions, the earlier judgement of co-equal bench is binding on the subsequent co-equal bench and it holds the field till it is over ruled by larger bench.

11. Therefore, as per these provisions the decision of the Supreme Court is binding on all subordinate courts, tribunals, institutions and citizens of India. Similarly, the judgement of the High Court is also binding on all its subordinate courts, tribunals, institutions and citizens residing in its territorial jurisdiction.

12. There is no provision in law that the previous decision of quasi-judicial authority like MahaRERA is binding on its benches. However, the judicial propriety and discipline demand that if the Authority takes a view and if it needs deviation then while making the deviation the Authority must express its view as to why earlier view has not been followed in the subsequent decision. Such deviation from earlier view must be for legal, logical and reasonable grounds for doing justice. This is necessary to maintain a judicial discipline in the institution.

13. Now turning to the case on hand I come across the judgment of Three Judge Bench of the Hon'ble Supreme Court which has dealt with similar situation in Hansa V. Gandhi-v/s-Shankar Roy AIR 2013 (SC) 2873. There was allotment letter of a flat in favour of the plaintiff. The same flat was agreed to be sold by the promoter to subsequent buyer by entering into registered agreement for sale. Plaintiff sought relief of specific performance of contract based on allotment letter. In such situation the Hon'ble High Court directed the promoter to refund the amount of plaintiff with interest and the same order has been confirmed by the Hon'ble Supreme Court. The Supreme Court ruled on legal point that in the absence of agreement for sale entered into between the plaintiff and the promoter there cannot be any right in favour of plaintiff with regard to the specific performance of the contract and therefore confirmed the order of the Hon'ble High Court directing the promoter to refund the purchase price with interest. The learned Advocate of the complainant submits that under Section 13 of RERA the complainant is entitled to get the relief of execution of the agreement for sale and case of Hansa Gandhi arose out of provisions of The Maharastra Ownership Flats Act (MOFA). Section 4(1) of MOFA is similar to section 13 of RERA. The only difference between the two is, section 13 of RERA prohibits the promoter from receiving more than 10% of the total value of an apartment without entering into an agreement for sale and in section 4(1) of MOFA the limit is 20%. Hence Hansa Gandhi's case applies to the facts of the case on hand.

14. In the facts and circumstances of the case, I find that once the promoter has executed the agreement for sale and registered it in favour of Mr. & Mrs. Trivedi, it is not desirable to give direction to the respondents to execute the agreement for sale of the same flat in complainant's favour especially when there is no whisper of malafides of Mr. and Mrs. Trivedi. They appear to be bonafide purchasers for value. Section 7 (3) of RERA

provides that instead of cancelling the registration, the Authority can pass suitable order to meet the ends of justice. Similarly, Section 37 of the Act also permits the Authority to issue direction by exercising its powers to meet ends of justice. I find it necessary to direct the respondents to refund the complainant's amount with interest at prescribed rate which is 2% above SBI's highest MCLR, it is currently 8.05%. Thus, the complainant is entitled to get his amount of Rs. 4,11,000/- with simple interest at the rate of 10.05% from the date of payment till it is refunded with Rs. 20,000/- towards the cost of complaint. The respondents express their willingness to comply with the order. Hence, the following order.

ORDER

The respondent shall pay the complainant Rs. 4,11,000/- with simple interest at the rate of 10.05% from the date of payment till its refund.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

The respondents are warned not to indulge into fraudulent act and practise unfair practice henceforth.

9.5.18

Mumbai.
Date: 09.05.2018.

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