

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000181

JOAN DISOUZA

... Complainant.

Versus

DEEPAK KARNIK & OTHERS

... Respondent.

MahaRERA Regn: P51700003984

Coram: Hon'ble Shri B.D. KAPADNIS.

04th October 2017

Final Order

The complainant has filed this complaint for refund of the amount paid by her to the respondent no. 1 in respect of plot nos. 96, 97 of Karnik's Exotica Project, with interest and compensation.

2. The complainant contends that the respondent No. 1 with his marketing team consisting of the respondent Nos. 2 & 3 advertised his scheme known as Karnik's Exotica situated at survey No. 69 / 2 & /3, Patgaon, Taluka Murbad, Dist. Thane, as the Weekend Luxury Villas. The respondent No. 1 mentioned in the brochure that the Karnik Developers Pvt. Ltd. has 100% marketable title, fully developed N.A. plots, ready for immediate possession, 24x7 security with amenities like wall compound around the project, main entrance gate, internal tar roads with plantations and drainage system, ample water supply etc. The complainant relied upon these representations of the respondents and purchased a plot No. 96 on 19.09.2013 and plot No. 97 on 02.04.2014 under register sale deeds. However, the respondent No. 1 did not provide the aforesaid amenities. Complainant further alleges that the respondents made her to believe that it is a Weekend Luxury Villas project and the bungalows would be constructed on the plots by the respondent No. 1. Therefore, she entered into a building construction contract dated 02.12.2013 for constructing a bungalow on plot No. 96. The respondent No. 1 agreed to complete the construction of the bungalow consisting of 1 hall, one kitchen, one bedroom, one bathroom on the ground floor and one bedroom, one toilet and the terrace on the first floor. Respondent No. 1 agreed to hand over its possession on or before 31.08.2014 but he failed to give the possession till the date of complaint. Hence the complainant claims Rs. 9,50,300/- paid by



her as the consideration and ancillary expenses for the plot No. 97, Rs. 11,11,760 in respect of plot no. 96 and Rs. 24,60,747/- paid towards the construction cost, total Rs. 45,22,807/- with interest under section 8 of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management & Transfer) Act, 1963 (For short, MOFA) and u/s 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as RERA).

3. The complainant alleges that she sustained loss or damage by a reason of incorrect, false statement of the respondent no. 1 that the building plan was sanctioned by the competent authority. She contends that the respondent no. 1 failed to adhere to the so called sanctioned plan by constructing one additional room on the ground floor and thereby, contravened Sections 12 and 14 of RERA.

4. She also alleges that the respondent no. 1 failed to rectify the defect in workmanship, quality and structural defects though they were brought to his notice and thereby, contravened Section 14(3) of RERA.

5. The respondent no. 1 has contested the matter. He denies all the above allegations but submits that he is ready to carry out the repairs at his own cost, if needed.

6. Perused the record. The parties and their advocate have been heard. Following issues arise from the facts and circumstances before me, which are referred to as under.

A. Jurisdiction.

The respondent no. 1 submits that the MahaRERA Authority has no jurisdiction to adjudicate the present dispute because there is no relation of buyer and developer (allottee & promoter) between the parties. It is admitted by the respondent no. 1 that Karnik Developer Pvt. Ltd. developed the project Exotica Luxury Villas and offered 106 plots for sale. The complainant has purchased plot nos. 96 & 97 from it. The project is still an on-going project registered under RERA. The definition of allottee defined by Section 2(d) of RERA Act includes a person to whom a plot is allotted or sold. Therefore, the complainant comes under the definition of allottee and the respondent no. 1 comes under the definition of promoter defined by Section 2 (zk) of RERA as it includes a person who develops the land into a project for the purpose of selling.

Section 3 of RERA specifies the Real Estate Projects which require the registration. RERA Authority gets jurisdiction over all the real estate projects which are eligible for registration irrespective of the fact as to whether they are registered or not. From 01.05.2017 when RERA came into

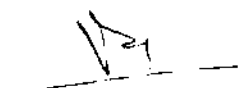


force in Maharashtra, MahaRERA gets the jurisdiction over all the real estate projects which are eligible for registration u/s 3 of RERA.

If the cause of action survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief under the said statute. This view gets the support from Section 88 of RERA which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, section 71 of RERA can be looked into. It provides that for the purpose of adjudicating compensation u/ss. 12,14,18 & 19, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matters covered u/ss. 12,14,18,19 is pending before the consumer disputes redressal forum, consumer disputes redressal commission or national consumer dispute redressal commission on or before the commencement of RERA he may, with the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. This provision therefore, indicates that RERA is retroactive. Considering all these aspects I find that the Authority has jurisdiction to entertain this complaint.

B. Whether it is an incomplete bungalow project?

The complainant contends that the respondent projected the project as weekend bungalow project and the respondent no. 1 contends that it is simply a project for selling N.A. plots. I have gone through the sale deeds wherein the respondent no. 1 has unequivocally contended that he proposes to develop the property/ complex known as Karnik's Exotica consisting of various building comprising bungalows with provisions of garages ----- vendor proposes to construct bungalows according to building plan approved by tahsildar Murbad vide order bearing no. LMN.A. P/S.R/75/09 dated 07th September 2009. So these recitals of the sale deeds corroborate the complainant's contention. It leads me to hold that it is a bungalow project.



The parties have referred to the order no. LMN.A.P/S.R/75/09 dated 07th September 2009 passed by the Tahsildar Murbad. It shows that while permitting the land for nonagricultural purpose Tahsildar directed the respondent no.1 to make the arrangement of supply of water, construction of sewerage and drainage. He is prohibited from transferring the plots without constructing the roads mentioned in the lay-out plan and without transferring the open space to the local authority. It is also mentioned therein that for construction of bungalows the permission of revenue and local authority would be required. He should apply to Tahsildar Murbad for getting the building plans approved by submitting no objection certificate from local Grampanchayat. The permission was to remain in force for two years from its grant. The respondent no.1 has not produced any documentary proof to prove that he obtained the permission for constructing bungalow on this site. There appears a map of building on the lay-out plan but it appears to me that the same was submitted for the purpose of calculating the permissible F.S.I. to enable town planner to recommend the sanction of lay-out. To conclude, there is no building plan approved by the competent authority. Admittedly the work of construction of the road is under way. The other amenities promised by the respondent no. 1 and directed by Tahsildar Murbad have not been completely provided till the date of the complaint. I hold this because the respondent no. 1 himself admits the said facts.

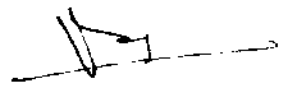
C. Construction of bungalow on Flat No. 96.

It is admitted fact that the respondent no. 1 took the contract for constructing the bungalow on plot no. 96 and constructed two bedrooms on the ground floor instead of one bedroom as agreed. This shows that the respondent no. 1 carried the construction without the sanction of the construction plan and also without paying any heed to the written agreement.

The complainant complains that the construction of the bungalow is defective in the sense that the cracks developed on terrace and walls, the rain water also leaked from the roof. Respondent no.1 shows his willingness to repair it. However, I find that the entire construction is illegal. He did not use a scientific approach while constructing it.

D. Delayed project.

The parties are not at dispute that the project was to be completed by 31st August 2014. It appears that the project is still incomplete and it has been registered with MahaRERA as ongoing project and many amenities have not been provided. The respondent no. 1 flouted the N.A. order and sold plots without making mandatory provisions regarding the



construction of road, water supply, sewerage etc. These facts have been proved by the complainant.

D. Reliefs.

The petitioner claims the refund of the funds with interest u/s 18 of RERA Act together with compensation. Section 18 of RERA gives an option to the allottee to demand the amount paid to the promoter in case of delayed project. In view of the above mentioned proved facts, the complainant feels that it is in her interest to withdraw from the project. She has exercised this right to get refund of her money.

The parties are not at dispute that the complainant had paid the respondent no. 1 Rs. 45,22,807/- as specified by her in her written argument. The respondent no. 1 is liable to return it with interest at the rate of marginal cost of lending of SBI which is now *8.15% plus 2% from 01.09.2014.

In view of the facts and circumstances of the case the complainant entitled to get Rs. One lac towards compensation on account of the mental stress and the inconvenience caused to her and her family members including the cost of the complaint.

It is necessary to direct the complainant to execute the documents of reconveyance of plot nos. 96, 97 in respondent no. 1's favor at his cost on satisfaction of her claim. Hence, the order.

Order.

The respondent no. 1 shall pay the complainant Rs. 45,22,807/- with the interest at the rate of marginal cost of lending of SBI which is now *8.15% plus 2% from 01.09.2014.

He shall pay Rs. One lac to the complainant towards the compensation and cost of the complaint.

The complainant shall execute the documents of reconveyance of plot nos. 96, 97 in respondent no. 1's favor, on satisfaction of her claim, within a month. Respondent no. 1 shall bear the cost.



(B.D. Kapadnis)

(Member & Adjudicating Officer)

MahaRERA, Mumbai

Mumbai
Date: 04.10.2017.

*8.15%-Corrected as per the order passed on 16.10.2017 u/s. 39 of RERA.

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

COMPLAINT NO: CC006000000000181.

Joan Alcino Dsouza

---Complainant.

Versus

Deepak Ramesh Karnik & Others
(Karniks Exotica)

---Respondents.

MahaRERA Regn: P51700003984

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

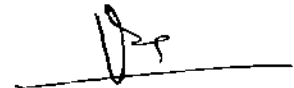
ORDER ON THE RECOVERY APPLICATION.

The complainant complains that the final order passed in her complaint on 04.10.2017 has not been complied with by the respondents.

2. In fact, on 14.12.2017 the matter of non-compliance was placed before the Authority. However, the respondents forwarded the draft of Writ Petition to contend that they want to challenge the final order and therefore, the Authority deemed it fit to wait and therefore, no order came to be passed for execution of the final order.

3. Today the matter has again been placed by the complainant for non-compliance of the final order. She has submitted that the Writ Petition filed by the respondents is at pre-admission stage and no adverse order therein has been passed.

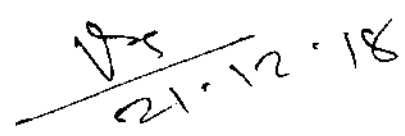
4. This Authority has waited to give "breathing time" to the respondents for moving the Appellate Authority on the principle of propriety. More than one year has passed after passing of the order and till the date the Appellate Authority has not stayed the execution of the order. Mr. Rajesh Sawant who acts for the respondents for the sale and marketing submits that he does not know about the progress of the Writ Petition.



Mr. Rajesh Sawant who acts for the respondents for the sale and marketing submits that he does not know about the progress of the Writ Petition. The complainant's claim is of monetary nature and therefore, I am convinced that it is necessary to execute the order.

5. Considering all these aspects, there is no other option but to issue the warrant against the respondents for recovery of the ordered amount.
6. Issue recovery warrant under Section 40(1) of RERA.

Mumbai.
Date:21.12.2018.


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