

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI
COMPLAINT No. CC006000000054807**

Mr. Saurav Purkayastha

..... Complainant

Versus

M/s. Ruparel Realty Pvt. Ltd.

..... Respondent

MahaRERA Registration No. P51900003250

Coram: Hon'ble Dr. Vijay Satbir Singh, Member -1

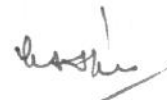
Adv. Pankaj Bandekar for the complainant.

Adv. Robin Vakil a/w Kinjal Shah for the respondent.

ORDER


(21st December, 2018)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to hand over possession of the flat within a stipulated period of two months without charging extra price or penalty or in the alternative to refund the amount paid by the complainant towards the cost of the said flat alongwith 12% interest per annum from the date of Intimation of Intention to exit the project in respect of booking of a flat bearing No. 1504 adm. 1110.99 sq.ft. carpet in the respondent's project known as "Ruparel Ariana" bearing MahaRERA registration No. P51900003250 at Parel, Mumbai 400 015.
2. This matter was heard finally on 11th October, 2018 when after hearing the arguments of both the parties the matter was closed for orders and the parties were directed to file their respective written submissions if any.
3. It is the case of the complainant that he had purchased the said flat in the respondent's project by executing registered agreement for sale dated 11th February, 2015 for total consideration amount of Rs.2,98,30,000/-. As per clause 41 of the said agreement the respondent was liable to hand over the possession of the said flat with occupancy



certificate on or before 2nd March, 2018. However, he has not received the possession on the said due date. Thereafter the complainant could not pay the outstanding dues payable for three months to the respondent for consideration of 34th slab since he lost his job. He further argued that since the respondent failed to hand over possession as promised and has extended the date of completion of the said project by almost three years, the complainant decided to exit the said project and also changed the entity without taking consent of the complainant. The complainant therefore requested to grant the relief as sought for by the complainant.

4. The respondent disputed the claim of the complainant and argued that since the complainant has defaulted to make slabwise payment he terminated the agreement as per the clause mentioned in the said agreement and showed his willingness to refund 80% consideration amount after deducting 20% amount towards the cost of the said consideration. The respondent further argued that the date of possession mentioned in the agreement has not yet come since as per clause no. 41 of the said agreement the respondent is liable to hand over the possession of the said flat to the complainant within 60 months from the date of commencement certificate. The commencement certificate for the sale building wherein the complainant's flat exists got the commencement certificate in the year 2015 and therefore the 60 day period would lapse in the year 2020. The said date has not yet come and the complainant cannot seek any relief under section 18 of the RERA Act. In addition to this, the respondent further argued that after taking steps towards the termination of the said agreement for sale the respondent has already sold the complainant's flat to third party and therefore he cannot hand over possession of the said flat to the complainant as prayed for. However, he showed his willingness to refund the amount paid by him without any interest.

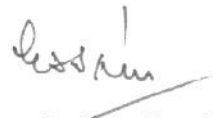


5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case it is clear that the complainant had purchased the flat in the respondent's project and paid substantial amount. Prima facie, it appears that the complainant had purchased the flat in the respondent's project and paid substantial amount towards the cost of the said flat. However, due to some personal reason he could not pay the slabwise instalment and hence the respondent terminated the agreement for sale as per the terms and conditions mentioned in the registered agreement duly signed by both the parties and has sold the said flat to third party. The complainant has admitted that he defaulted in making the payment of 34th slab. Now the complainant is seeking possession of the flat without charging extra penalty amount. The said request of the complainant cannot be accepted at this stage since the respondent has already sold the said flat to third party and third party rights have already been created.
6. With regard to the alternate prayer sought by the complainant and refund alongwith 12% interest the MahaRERA feels that according to the registered agreement for sale signed by both the parties the respondent was liable to hand over possession of the said flat to the complainant within 60 months from the date of commencement certificate.
7. In the present case, as per the permissions uploaded on MahaRERA has obtained commencement certificate for the said building on 16th April, 2018 and 60 days period would complete by April 2020. Since the date of possession has not yet reached the complainant cannot seek relief under section 18 of the RERA Act for interest @ 12% per annum as prayed for.
8. The MahaRERA further observed that the respondent has shown his willingness to refund by deducting 20% amount out of the total amount paid by the complainant. The MahaRERA feels that such deduction of the amount by the promoter is not permissible under RERA Act. Though the respondent / promoter has cancelled the registered agreement for sale executed on 11th February, 2015 and sold the said flat to third part



till date he has not taken any amount towards the refund of the amount to the complainant.

9. Considering the above facts and in compliance of principles of natural justice the MahaRERA directs the respondent to refund the entire amount paid by the complainant towards the purchase of the said flat without deducting any amount, within a period of 30 days from the date of this order.
10. With the above directions the complainant stands disposed of.



(Dr. Vijay Satbir Singh)
Member-I/MahaRERA