

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000001448

Amitkumar Ahuja ...Complainant.

V/s

Devisha Infrastructure Pvt.Ltd.Co. Respondents.

MahaRERA Regn. P52000012671

Hon'ble Shri B.D. KAPADNIS.
(Member & Adjudicating Officer)

Final Order.

21st November 2017

The complainant has filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 for getting refund of the amounts paid by him to the Respondent in the context of one BHK flat booked in his name and another two BHK flat booked in the name of his wife Mrs. Swati in respondent's project HEXWORLD situated at Rohinjan (Kharghar) Dist. Raigad.

2. The complainant contends that he booked the above mentioned flats on 31.01.2010 and 30.04.2011 respectively and paid their consideration in part. The project is stalled from last five years and therefore, he wants the money back.

3. The parties have been heard on the point of maintainability of this complaint. The complainant himself has mentioned in his letter attached to his complaint that the date of completion promised by the Respondent was 2018, therefore, I find that Section 18 of the Act will not come into play because the agreed date of handing over the possession of the flats booked

by the complainant is yet to pass. Therefore, there is no cause of action to file the complaint before the agreed date of delivery of possession. Hence, complaint is not maintainable and it will have to be dismissed.

4. The learned Advocate of Respondent Mr. Yadav brings to my notice that this project has been attached under Section 5 of the Prevention of Money Lending Act, provisionally. According to him any aggrieved party can challenge the order of attachment under Section 26 of the Prevention of the Money Laundering Act, 2002 before the Appellate Tribunal. The jurisdiction of the Civil Court is barred by Section 41 of the Prevention Money Lending Act from entertaining suit or proceedings in respect of any matter which the Director, Adjudicating Authority or the Appellate Tribunal is empowered by or under the said Act to determine. This argument of Mr. Yadav, does not appeal to me because the action taken under Prevention of the Money Laundering Act can be dealt with by the authorities mentioned in section 41 and the jurisdiction of the Civil Court is barred in respect of only those matters. So far as the jurisdiction of MahaRERA is concerned, MahaRERA has jurisdiction under Section 18 of the Real Estate (Regulations and Development) Act, 2016 to adjudicate the matter regarding the refund of the amounts paid by the allottee to the promoter on promoter's failure to hand over the possession of the apartment on the agreed date. This jurisdiction does not fall under the duties of the authorities mentioned in Section 41 of Prevention of Money Laundering Act. Hence, the jurisdiction of MahaRERA is not barred from entertaining the complaints if they arise out of the Real Estate (Regulation and Development) Act, 2016 though the project might have been attached under the said Act. In result, the order.

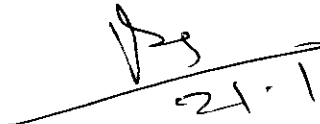


ORDER

The complaint is dismissed.

Mumbai.

Date: 21st November 2017.


21.11.17
(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.