

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

COMPLAINT No: CC006000000044212

Mr. Ketan Champalal Jain & Anr Complainants
Versus
M/s. Accord Builders Respondent

Along with

COMPLAINT No: CC006000000044213

Mr. Bijal Nilesh Dhanani & Anr Complainants
Versus
M/s. Accord Builders Respondent

Along with

COMPLAINT No: CC006000000044214

Mrs. Manisha Punamiya & Anr Complainants
Versus
M/s. Accord Builders Respondent

Along with

COMPLAINT No: CC006000000044215

Mrs. Lata Punamiya & Anr Complainants
Versus
M/s. Accord Builders Respondent

MahaRERA Registration No. **P51800005985**

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

Adv. Hitesh Dabhi appeared for the complainants.

Adv. Devendra Patankar a/w Adv. Rakesh Patel appeared for the respondent.

ORDER

(29th August, 2018)

1. The aforesaid 4 complainants / allottees have filed these 4 separate complaints for violation of Sections-12,13,18 and 19 of RERA Act in respect of booking of their respective flats in the respondent's project known as

"Vive" at Kurla, Mumbai bearing MahaRERA Registration No. P51800005985. The complainant have requested MahaRERA for directions to the respondent to refund the booking amount along with interest at MCLR +2% as prescribed under Rule-1 and 19 of MahaRERA (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal etc) Rules, 2017 from the date of receipt of payment. The complainants have also prayed for cost of legal expenses of Rs. 50,000/- each Under Section 12, 13, 18 and 19 (4) of RERA Act.

2. During the hearings, all the complainants and the respondent sought time to settle the matters amicably. However, in spite of several meetings, no settlement has taken place and hence, the matters were finally heard and the parties were directed to submit their respective written submissions on record of the MahaRERA.
3. The complainants have argued that they booked their respective flats in the respondent's project in the year 2016 for a total consideration amount of Rs.1,16,52,250/- and they have paid substantial amount towards booking of the said flats. However, respondent failed to execute registered agreement for sale. In the booking form, the area of the flats was shown as 389.98 sq.ft. However, while in the allotment letter, the area of flats was shown as 378.25 sq.ft. i.e. about 20% less than what is shown in the application forms given by the respondent. The complainants are, therefore, seeking relief for violation of Section-12 of RERA Act. The complainants further argued that in the bookings form parking space is shown as covered parking whereas in the allotment letters nothing is mentioned about the provision of car parking.
4. The complainants have further argued that the respondent has agreed to deliver the possession of the flats on or before December, 2019 at the time of booking. However, while registering the project with MahaRERA

respondent has shown the date of completion as 30th June 2022, which is illegal and not as per the agreed terms. The complainants are, therefore, seeking refund of amount paid alongwith the interest and compensation.

5. The respondent has disputed the claim of the complainants and denied the allegations made by the complainants. The respondents argued that the complainants were sold their respective flats admeasuring 389.98 sq. ft. carpet area for a total consideration of Rs.1,16,52,250/- and till date the complainant have not come forward to execute the registered agreement for sale despite repeated follow up from the respondent. The respondent have even informed the complainants about the legal consequence on failure to enter into the agreement and finally notice of termination of booking was issued to the complainants in consonance with the agreed terms in the application form.
6. The respondent has further argued that since there is no registered agreement executed between the complainants and respondent, complainants are not the allottees under definition of the section 2(d) of the RERA Act, and therefore, the provision of Section-18 of RERA Act is not applicable to the present case.
7. The respondent also argued that the present complaint is premature, since there is no agreed date of possession and the revised date of possession /completion mentioned in RERA website has not yet come. Therefore, the respondent is not liable to pay interest and compensation as prayed for by the complainants. The respondent further argued that regarding the allegations made by the complainants about lesser area is also not true as in the allotment letter itself the area of the flats is mentioned as 400 sq.ft. i.e. 378.25 sq.ft carpet area and balance area of 22.50 sq.ft. as additional area for exclusive beneficial use of the said flats and the same has been covered in the draft agreement for sale.

8. As regards the issue of car parking raised by the complainants, the respondent argued that he had not sold parking to any of the flat purchasers and that he is giving parking to the flat purchasers as an amenity with the flat free of cost and as such, there cannot be any misrepresentation by the respondent so far as parking is concerned. In addition, the respondent further argued that the complainants have raised a dispute about excavation at the site. This was totally incorrect as on date the project of the respondent had already reached upto plinth level. However, the complainants are not ready and willing to pay the instalments of the flats as per the progress of the project and is also not willing to execute the registered agreements for sale.

9. However, the respondent has given an undertaking on record with this Authority that they are ready and willing to execute and register the agreement for sale with the complainants. The respondent further argued that he had spent a sum of Rs.2,23,000/- to the broker for payment of brokerage in respect of the flat sold to the complainants and also incurred administrative charges. Since 2016 till date the complainants have blocked the unit / flat and therefore, the complainants are not the genuine customer requiring flat for personal use but are investors. The respondent further argued that under Section-32 of RERA Act, MahaRERA has to protect the interest of the respondent considering fate of other flat purchasers as also for promotion of real estate sector. In view of these facts, the respondent pray for dismissal of these complaints and for directions of MahaRERA to the complainants to execute registered agreements for sale in a time bound manner in accordance with Section-13 and Section-37 of RERA Act, 2016.

10. The MahaRERA has examined the arguments made by both the parties, documents placed on record. Prima facie, it appears that the complainants/allotees have booked their flats in the respondent's project

in the year 2016 and made 20% of the total cost of the flat and there is no registered agreement executed till today. The complainants are seeking reliefs for violation of Sections 12, 13, 18 and 19 of RERA Act.

11. With regard to violation of Section-12, the complainants have argued that the area of the said flats mentioned in the allotment letter is less than what was agreed to. However, on perusal of the allotment letters dated 22.3.2017, it appears that the area mentioned is 401.7 sq.ft. and in the application form signed by the parties, the area shown is 389.98 sq.ft. The respondent has argued that in para-1 of the allotment letter, the respondent has clarified that the area of the flat is 401.7 sq.ft. i.e. carpet area of 378.25 sq.ft. and balance area comprise of service slabs 22.50 sq.ft. which is shown as actual usage area of the flats mentioned in the allotment letters is more than what is mentioned in the application form and therefore, MahaRERA feels that there is no violation of Section-12 of RERA Act.
12. With regard to violation of Section-13 of RERA Act, MahaRERA feels that the respondent has submitted written undertaking on record of the MahaRERA that as on today, the respondent is ready and willing to register the agreement for sale with the complainants.
13. In respect of violation of Sections-18 and 19 of RERA Act, MahaRERA feels that the complainants have alleged that at the time of booking the respondent has agreed to hand over the possession of said flat completed by December, 2019 and now, in RERA Registration the respondent have mentioned the date of completion as 30th June, 2022. Therefore, the complainants are entitled to seek refund of amount paid by them along with the interest and compensation U/S 18 and 19 of RERA Act. In this regard, MahaRERA feels that there is no violation of Sections-18 and 19 of RERA Act since there is no agreement executed by and between the parties and there is no date of possession mentioned either in the

application form signed by both the parties or in the letter of allotment. Clause No. 4 (n) of the letter of allotment is shown as December, 2019 with grace period of 1 year and force majeure event, which date has not yet lapsed. Therefore, the complainants are not entitled to any relief U/S 18 and 19 of the RERA Act.

14. Considering the aforesaid facts, MahaRERA feels that since the complainants have paid more than 10% of the total cost of the flats the respondent is liable to execute the registered agreement for sale with the complainants. The complainants are entitled to seek relief under Section -13 of RERA Act and hence, MahaRERA directs the respondent to execute the registered agreement for sale with the date of completion stipulated in the allotment letter within 30 days from the date of passing of this order failing which, the respondent may refund the amount paid by the complainants as per agreed terms and conditions of allotment letters.

15. With this directions, all four complaints stands disposed of.



(Dr. Vijay Satbir Singh)
Member-1/MahaRERA