

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI
COMPLAINT NO: CC006000000001389

Gaurav Makkar

... Complainant.

Versus

Shining Sun Constructions
(Marble Arch)

... Respondents.

MahaRERA Regn: P52000013234

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

Appearance:

Complainant: Adv. Mr. Sadanand D.Desai.

Respondents: Through Mr. Liyakat Kalsekar.

Final Order

23rd March 2018.

The complainant complains that he has booked flat no. 702 in respondents' registered project Marble Arch situated in Sector 14 Panchanand, Taloja, New Bombay. Though the respondents received more than 10% of the total consideration of the flat, they failed to execute the agreement for sale in complainant's favour and thereby contravened Section 13 of Real Estate (Regulation and Development) Act, 2016 (RERA.). The complainant further complains that they have failed to deliver the possession of the flat in December 2013 as agreed and therefore, the complainant seeks the refund of his amount with interest.

2. The respondents have pleaded not guilty but they have not submitted any explanation. To-day, when the matter is for hearing, nobody



has appeared on behalf of respondents. Heard the learned advocate for complainant.

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

Points	Findings
1. Whether the respondents have failed to execute the agreement for sale and register it even after receiving more than 10% of total consideration of the flat No. 702?	Affirmative.
2. Whether it is necessary to issue direction to execute and register agreement for sale and to impose penalty under Section 61 of the Act?	Affirmative.
3. Whether the complainant is entitled to get refund of his amount on respondents' failure to deliver possession on the agreed date under Section 18 of the Act?	Negative.

REASONS

4. The complainant has brought to my notice that total consideration of the flat was Rs. 20,75,028/- and the complainant has paid the respondents Rs. 19,82,065/- but the respondents have not executed the agreement for sale and registered it.

5. The Section 13 of RERA prevents the promoter from accepting a sum more than 10% of the cost of the apartment without first entering into written agreement for sale and register it. It was possible for the respondents to execute the agreement for sale even after RERA coming into force but they have not executed it. They have been attending matter from last 2 ½ months but they have not executed the agreement, though they are aware of the legal requirement. The opportunity was given to the respondents to amicably settle the issue but the respondents have not responded to it. After taking into consideration all these facts especially the

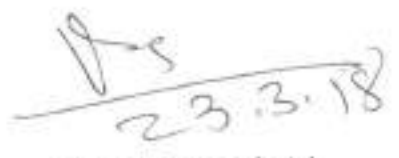
conduct of the respondents, to meet the ends of justice it is necessary to direct the Respondents to execute the agreement for sale in complainant's favour by the end of March 2018 and register it by imposing penalty of Rs. 50,000/- u/s 61 of RERA.

6. So far as refund of amount with interest and or compensation sought by the complainant is concerned, I find that it requires the agreement for sale, allotment letter cannot be treated as agreement for sale for the purpose of Section 18. For this purpose, I rely upon three judge bench decision of the Hon'ble Supreme Court passed in Hansa V. Ghandhi-Vs-Deep Shankar Roy - AIR 2013(SC)2873. In this report Supreme Court has observed that the allotment letter cannot be treated as agreement for sale. Hence, the complainant is not entitled to get any relief under Section 18. In result, the order.

ORDER

1. The respondents shall execute the agreement for sale in complainant's favour of flat No. 702, Marvel Arc situated at Taloja, New Bombay by the end of March 2018.
2. The complainant shall co-operate with the respondents by paying the stamp duty and registration charges.
3. The respondents shall pay Rs. 50,000/- towards penalty under Section 61 of the RERA.
4. The complainant's claim for refund under Section 18 of the Act is hereby rejected.
5. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

Mumbai.
Date:23.03.2018.


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

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MahaRERA Regn: P52000013234.

Coram: Shri B.D. Kapadnis, Hon'ble Member,
MahaRERA, Mumbai.

Appearance.

Complainant: through Susheel Makkar

Respondent: Absent.

Order on the application filed by the complainant for executing the order
passed in CC006000000001389.

31st May 2018.

The complaint has been decided on 23rd March 2018. The respondents have been directed to execute the agreement for sale in complainant's favour of flat no. 702, Marble Arch situated at Plot no. 104, Sector-14, Panchnand, Taloja, Navi Mumbai by end of March 2018 and also to pay her Rs. 20,000/- towards the cost of complaint. Penalty of Rs. 50,000/- is also imposed u/s 61 of RERA.

2/- The complainant complains that the respondents have not complied with the order. Hence she requests to execute/enforce the same.

3/- Section 40(2) provides that if any Adjudicating Officer or the Regulatory Authority or the Appellate Tribunal issues any order or directs any person to do any act or refrain from any act, which it is empowered to do under RERA or the Rules and Regulations made thereunder, then in case of failure of any person to comply with such orders or directions, the same shall be enforced in such manner as may be prescribed.



4/- Rule 4 of The Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal Etc.) Rules, 2017 provides that every order passed by the Adjudicating Officer or the Authority under the Act or the Rules and Regulations made thereunder shall be enforced by the Adjudicating Officer or the Authority in the same manner as if it were a decree or the order made by the Principle Civil Court of original jurisdiction in a Suit. Therefore, this Authority has jurisdiction to enforce the order passed in the complainant's case.

5/- Section 40(1) r/w Rule 3 of The Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal Etc.) Rules, 2017 empower the Authority to recover the penalty and the cost imposed upon the respondents as the arrears of land revenue under MLRC. It is reported by the Finance Controller of the Authority that the respondents have not deposited Rs. 50,000/- imposed as penalty under Section 61 of RERA. They have not paid the cost of complainant to complainant also. Hence, it is necessary to issue warrant to the District Collector, Raigad for recovery of those amounts.

6/- So far as the execution of the agreement for sale is concerned the provisions of order XXI, Rule 34 of Code of Civil Procedure will have to be followed. Therefore, I proceed to pass the following order.

ORDER

1. The complainant shall serve a draft of proposed agreement for sale on the respondents before 19.06.2018.
2. If the respondents want modification/changes in the draft, they shall appear before the Authority on the said date.
3. After hearing the parties necessary directions for changing/modifying the draft, if required shall be given.
4. Thereafter the complainant shall transcribe the draft on the requisite stamp paper and respondents shall execute and register it on the date specified by the Authority.
5. In case of respondents' failure to execute and register the agreement, the Secretary of MahaRERA shall execute and register the agreement on behalf of the respondents at the cost of complainant.
6. The agreement for sale executed by the Secretary of MahaRERA will be deemed to be the agreement executed by the respondents themselves and shall be binding on them.



7. Issue recovery warrant against the respondents for recovering the amount of penalty of Rs. 50,000/-. The Secretary of MahaRERA shall pursue the matter and if necessary may seek appropriate directions including the measure to freeze the respondents' accounts.
8. Issue recovery warrant for recovering Rs. 20,000/-, the cost of the complaint against the respondents directing the Collector Raigad, to pay the same to the complainant on its recovery.

Mumbai.
Date: 31.05.2018.


31.5.18
(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.