

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI
COMPLAINT NO. CC006000000022925

Anita Naik ... Complainant

VERSUS

Mr. Rajendra Sawant ... Respondent

MahaRERA Regn: - P 51800010794

Coram ... Shri Madhav Kulkarni
Hon'ble Adjudicating Officer

Complainant: Present
Respondent: Representative

Order

Date: 30.08.2018

1. The Complainant who had booked a flat with Respondent/Builder seeks withdrawal from the project and refund of the amount paid to the Respondent along with interest and compensation.
2. The Complainant has alleged that she booked Flat No.1201 admeasuring 590 sq.ft. on 12th floor in the project of the respondent viz. Green Acres at the land Survey No. 273/1, i.e. C.T.S. No. 738/B/1/A at Shree Azad Co-Op. Housing Society Ltd., Rani Sati Marg, Pathanwadi, Malad (East), Mumbai - 400 097. The price agreed was Rs. 32,74,500/- By letter of initial demand dated 1.8.2011 this price was quoted. However, thereafter, the respondent increased the price to Rs.35,52,000/- on 3rd June, 2013 vide his letter. In the meanwhile, the complainant had received allotment letter on 11th June 2012. Thus, the respondent increased the price of flat by Rs.2,77,500/-. The respondent further increased the price of the flat up to

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Rs.36,85,500/-, i.e. total increase of Rs.4,11,000/-. The respondent also changed the flat No. 1201 to 1209. Initially it was agreed that 30% of the price will be paid at the time of booking and 70% after agreement of sale with valid C.C. The complainant has paid in all Rs. 9,82,350/-. She has taken loan from HDFC bank to the extent of Rs. 5 lakhs because the respondent is entitled to interest @ 18% p.a. in case of delayed payment. The respondent is not keeping his words. No agreement of sale has been executed. The respondent is avoiding phone calls. On 11th July 2017 the complainant wrote a letter to the respondent for cancellation of booking and refund of her amount. The respondent has only issued a cheque of Rs.1 lakh. On the other hand, vide letter dated 3rd June 2013 he had demanded 50% of the price of the flat. As no construction had commenced the complainant disagreed to pay such amount. There upon the respondent directed the complainant to produce pre-sanction letter from Financial institution and threatened to cancel the allotment of flat. The complainant has therefore filed this complaint.

3. This matter came before me on 24th April 2017. The complainant and the representative of respondent were present. Plea of the respondent was recorded and he was directed to file written explanation. On 22nd May 2018 the complainant expressed desire to amend the complaint. She filed amendment application on 12th June 2018. The respondent has thereafter file his reply on 04th July 2018. On 1st August 2018 arguments of both parties were heard. As I am working at Mumbai and Pune Offices in alternative weeks and as stenographer was not available, this matter is being decided now.

4. In his reply the respondent alleged that he has not committed any breach of provisions of RERA. Hence, provision of RERA are not attracted. No registered agreement of sale has been executed in favour of the complainant. Hence, this complaint is not tenable. Respondent No.1 is a company and respondent No.2 is one of the Directors. Respondent No.2 is

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not personally liable. The respondent has already informed the complainant that he will pay Rs.9,82,350/- in instalments and complainant had agreed to the same. Accordingly, respondent has paid Rs.1 lakh by cheque. The balance will be paid by December 2018 with interest that is paid by Nationalised Banks on Savings Account.

5. On the basis of rival contentions of the parties following points arise for my determination. I have noted my findings against them for the reasons stated below:

Points	Findings
1) Has the respondent committed breach of Agreement?	Yes.
2) Is the complainant entitled to Reliefs claimed?	Yes
3) What Order?	: As per final order

Reasons

6. Point No.1 & 2 There is no dispute that no registered agreement was executed by respondent in favour of the complainant. In fact, respondent No.2 is a company and respondent No.1 is its Director. Therefore, the respondent No.1 will be responsible only in his capacity as Director of the Company. However, he cannot be absolved from liability if the company is found liable.

7. The respondent challenges the complaint on the ground that no registered agreement has been executed in favour of the complainant. What is important is whether the complainant is an allottee within the meaning of section 2 (d) of the RERA. As per definition allottee in relation to a Real Estate Project means a person to whom a plot/apartment or building as the case may be has been allotted _____.

8. Thus, execution of a registered agreement is not a pre-requisite to become an allottee under RERA. No doubt Section 13 prohibits a promoter

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from accepting an amount exceeding 10% of the cost as advance payment without first entering into written agreement for sale and registering it. Contravening of this provision attracts penalty under chapter 8. However, only because a registered agreement of sale is not executed, the complainant does not go out of the definition of the allottee.

9. The complainant has alleged that she received letter of allotment of Flat No.1201 from respondent on 11th June 2012. Copy of the letter is placed on record. The area mentioned is 590 sq.ft. The price mentioned is Rs.32,74,500/-. It is the contention of the complainant that the respondent has unilaterally changed the allocation to flat No.1209. Likewise, he has increased the price of the flat by Rs.4,11,000/-. There is practically no denial from respondent in this respect. One demand letter dated 3rd June 2013 is placed on record by complainant which shows total agreement value as Rs.35,52,000/- There is further a letter from complainant dated 25th June 2013 and a letter from respondent dated 31st August 2013. The issues like service tax, development charges were being discussed. Issue of change of flat is mentioned in the letter of complainant dated 27th June 2013 and the complainant seems to have consented to the change of flat having more area. It appears that going was smooth till this time.

10. The communications of the year 2016 show that the relations were strained. The letter dated 17th March 2016 shows that complainant was seeking appointment with the Director and was anxious. Since he had made payments before about 6 years. Then there is letter dated 6th July 2017 which speaks about cancellation of booking of Flat No. 1201 and the refund of the amount paid. There is request to make repayment with interest as per prevailing Nationalized Banks rate as there was financial emergency at home. Now the grievances being made out is that no construction has started. The respondent has not denied this allegation.

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11. One thing is certain that respondent after receiving about 30% of the price of the flat has not executed a registered agreement either of flat No.1201 or Flat No. 1209 in favour of the complainant. Consequently, the date for delivery of possession cannot be ascertained.

12. The respondent has accepted cancellation of booking by the complainant. He has repaid Rs.1 lakh out of Rs.9,82,350/-. The receipts placed on record show that the complainant paid;

Date	Amount
November 12, 2010	1,00,000/-
January 11, 2011	4,00,000/-
January 22, 2011	2,00,000/-
May 24, 2011	1,63,800/-
June 20, 2011	92,000/-
August 23, 2011	26,550/-
Total	9,82,350/-

13. The only question is when the respondent had promised to deliver possession of the flat to the complainant. While booking the flat, the allottee is bound to enquire as to when he will get possession of the flat. He will not put money when there is uncertainty of delivery of possession. In the case at hand complainant has made payments since November 2010 to August 2011. Now, 7 years have gone by. This was a reasonable period for the respondent to deliver possession of flat to the complainant. No doubt there are twists that alternate flat was sought to be allotted at higher price. However, nothing of that kind has materialised. No agreement has been registered. Therefore, it can be safely concluded that the respondent has failed to deliver possession as per original promise.

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14. Likewise complainant has failed to prove that she sought Bank loan in order to make payment to the respondent. The loan sought is well before booking the flat and personal loan.

15. I therefore answer point No.1 & 2 in the affirmative and proceed to pass following order.

Order

1. The respondent shall pay Rs.8,82,350/- to the complainant together with interest at the rate of State Bank of India's MCLR plus 2% prevailing as on date from the date of payment.
2. The respondent shall pay Rs. 20,000/- towards the cost of complaint.
3. The respondent shall pay the above said amount within 30 days from the date of this order.

Date: 30.08.2018
Place: Mumbai


(Madhav V. Kulkarni)
Adjudication Officer,
MahaRERA, Mumbai.