

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

COMPLAINT NO: CC005000000000093

Umesh Magar . . . Complainant.
Versus
Kul Developers Pvt. Ltd. . . . Respondents.
(Kul Nation R2 - Tower 5)
MahaRERA Regn: -P52100007384.

COMPLAINT NO: CC005000000000120

Shailee Singh . . . Complainant.
Versus
Kul Developers Pvt. Ltd. . . . Respondents.
(Kul Nation R2 - Tower 4)
MahaRERA Regn: -P52100009533.

COMPLAINT NO: CC005000000000137

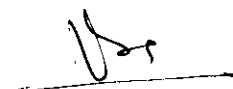
Chandra Shekhar Singh . . . Complainant.
Versus
Kul Developers Pvt. Ltd. . . . Respondents.
(Kul Nation - R1 - Tower 7)
MahaRERA Regn: -P52100009524.

COMPLAINT NO: CC005000000000147

Deepali Dalavi . . . Complainant.
Versus
Kul Developers Pvt. Ltd. . . . Respondents.
(Kul Nation - R1 - Tower 7)
MahaRERA Regn: -P52100009524

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

Complainants: Adv. Ashok Devkhile.
Respondents: Law square Advocates.



Common Final Order.

02nd January 2018.

Whether a promoter is required to enclose commencement certificate obtained from the competent authority while submitting application for registration of his project as per Section 4(2)(c) of Real Estate (Regulation and Development) Act, 2016, is the legal issue involved in these four complaints filed under Sections 4,11(1)(e) and 12 of Real Estate (Regulation and Development) Act, 2016, hereinafter called as RERA.

Brief facts of complaints.

2. Complainant Mr. Umesh Magar contends that he booked flat no. 1103 in tower no. 7, R2 of phase 1 of respondents' kul nation project situated at Manjari khurd, Pune. The respondents agreed to deliver its possession on or before December 2016. However, while executing the agreement for sale on 11.12.2014, the respondents mentioned therein that the possession shall be handed over within 5 years from the date of agreement. This date would be 10.04.2020. He further alleges that while registering the project with MahaRERA, the respondents have mentioned that the possession would be delivered on 19.07.2021.

3. Complainant Ms. Shailee Singh contends that she booked flat no. 1201 in tower no. 4, R2 of phase 1 of respondents' kul nation project situated at Manjari khurd, Pune. The respondents agreed to deliver its possession on or before December 2016. However, while executing the agreement for sale on 11.04.2014, the respondents mentioned therein that the possession shall be handed over within 5 years from the date of agreement. This date would be 10.04.2019. He further alleges that while registering the project with MahaRERA, the respondents have mentioned that the possession would be delivered on 20.10.2020.

4. Complainant Mr. Chandrashekhar Singh contends that he booked flat no. 137 in tower no. 7, R1 of phase 1 of respondents' kul nation project situated at Manjari khurd, Pune. The respondents agreed to deliver its possession on or before December 2016. However, while executing the agreement for sale on 14.02.2015 the respondents mentioned therein that the possession shall be handed over within 5 years from the date of agreement. This date would be 13.02.2020. He further alleges that while registering the project with MahaRERA, the respondents have mentioned that the possession would be delivered on 26.01.2021.



5. Complainant Ms. Dipali Dalvi contends that she booked flat no. 204 in tower no. 7, R1 of phase 1 of respondents' kul nation project situated at Manjari khurd, Pune. The respondents agreed to deliver its possession on or before December 2016. However, while executing the agreement for sale on 11.04.2015 the respondents mentioned therein that the possession shall be handed over within 5 years from the date of agreement. This date would be 10.04.2020. She further alleges that while registering the project with MahaRERA, the respondents have mentioned that the possession would be delivered on 16.01.2021.

6. These complainants complain that the respondents have failed to deliver possession of their flats in the year 2016 as orally agreed. They claim their amount with interest u/s. 18 of RERA. However, when they have been confronted with the dates mentioned in their agreements for sale, they have not pressed their complaints u/s 18 of RERA as the agreed dates for possession have not been crossed yet.

7. The complainants have mentioned that while registering the project with MahaRERA, the respondents have mentioned wrong dates of possession / completion of project as mentioned above. They have not enclosed commencement certificate and thereby they have contravened Section 4 of RERA.

8. The complainants have alleged that though more than 50% of the apartments have been booked, the respondents have not formed association/ society of the allottees and thereby they have violated Section 11(1)(e) of RERA.

9 The complainants have alleged that entire phase-1 consists of R-1 and R-2 in which ten towers each having 25 floors were to be constructed and the amenities common to this phase were to be provided by the respondents particularly internal roads and access roads. However, while registering their project the respondents have registered the individual towers to delay the project and thereby they have contravened Section 12 of RERA.

Defence of the respondents.

10. The respondents contend that they have agreed to deliver possession of the flats booked by the complaints within five years from the date of their agreements. The agreed dates have not lapsed. They have not revised the dates of possession mentioned in the agreements and the flats of the complainants shall be completed within the agreed period of construction. They have shown their readiness to form the society however, it is there contention that as per the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of



Construction, Sale Management and Transfer) Act, 1963, (referred to as MOFA) they were required to form the society within three months from obtaining the occupation certificate on the construction of the last building. They have contended as per the provisions of RERA and rules framed thereunder they are entitled to register the phase of a Real Estate Project which may consist of a building or wing of the building or floors of multi-storeyed building. They deny that they furnished any incorrect/ false information while registering the project. Hence they request to dismiss the complaints.

11. Heard both the parties and perused the papers. Following points arise for consideration. I record findings thereon as under:

POINTS.	FINDINGS.
1. Whether the respondents have contravened Section 4 of RERA by not enclosing commencement certificate?	Negative
2. Whether the respondents have contravened Section 4 of RERA by uploading wrong date of possession/completion?	Negative
3. Whether the respondents contravened Section 12 of RERA by registering separate towers instead of registering the entire phase no.1 and by providing wrong information?	Negative
4. Whether the respondents are required to form association/ society of allottees u/s 11(1)(e) of RERA?	Affirmative
5. Whether the complainants are entitled to get refund of their amount, interest or compensation?	Negative

REASONS

Point no. 1, non- enclosure of commencement certificate.

12. The complainants have contended that while registering the projects the respondents have not uploaded the commencement certificate. Section 4 of RERA requires, every promoter shall make an application for the registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified.

Sub-section (2) provides that promoter **shall enclose** following documents along with the application referred to in sub-section (1) namely-



“(c) An authenticated copy of approvals **and commencement certificate** from the competent authority obtained in accordance with the law as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approval and commencement certificate from the competent authority for each of such phases.”

Section 2(m) of RERA defines commencement certificate. “Commencement certificate means commencement certificate or building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per sanctioned plan”.

13. I have been told that a local authority in Mumbai normally issues Intent of disapproval at first instance which is being treated as permission to proceed ahead with the project. In fact, intent of disapproval(IOD) cannot be equated with commencement certificate as defined by the RERA. IOD mentions shortcomings/deficits of the proposal seeking permission to commence the construction. IOD very often mentions that some more permissions, no objections are required from various authorities or some compliances are required to be complied with and therefore the proposal for permission to commence construction is disapproved. In other words, if it is to be treated as permission for construction, it is conditional, that is to say, on compliance of those conditions alone construction can be started. In fact, it only indicates that papers for obtaining commencement certificate have been submitted to the competent authority. Commencement certificate is given only when all the legal requirements are complied with. It is next stage of IOD.

14. Now the next question is, whether it is mandatory or directory. One has to refer to the preamble of the Act which discloses the aims and objects of the enactment of RERA. Relevant aims and objects are--

To establish the Real Estate Regulatory Authority for

- i) promotion and ii) regulation of real estate sector,
- ii) To ensure sale of plot, apartment, building or real estate project in an efficient and transparent manner,
- iii) To protect the interest of consumer in real estate sector.

15. When a project is registered under RERA common man presumes that all the requirements of law are complied with and it is safe to transact with promotor. Registration certificate acts like a guarantee of soundness and viability of the project. That is why it is incumbent on the promoter to quote registration



number of his project in every advertisement. Commencement certificate helps to bring transparency and efficiency in housing industry. Various ongoing projects in the State are being delayed only because approvals, permissions and no objections have not been taken before commencement of construction activities. The allottees are sufferers. On the other hand, once promoter obtains IOD, he gets his project registered and starts to sell the units of his project though all the sanctions are not at their place. This causes deception also when promoter fails to qualify his project for commencement certificate. In my opinion, if the aims and objects of the Act are to be achieved in their true spirit, it is necessary to compel a promoter to enclose commencement certificate at the time of registration of the project itself. It appears that it is the intention of parliament that promoter should not sell any unit of his project unless and until commencement certificate is obtained after taking all permissions and after complying with all the legal compliances. Therefore, to equate IOD with commencement certificate is illegal and unethical also. It is the duty of Real Estate Regulatory Authority to deprecate the practice of issuance of IOD and encourage the practice of issuance of commencement certificate to protect and develop the housing industry and to protect consumers also in the days to come. Moreover, section 4(2) (c) uses the words 'shall enclose commencement certificate' which is indicative of the fact that Parliament wants to make it mandatory. Hence I hold that this provision is mandatory.

16. In view of the provisions of law as discussed, it is necessary to enclose the commencement certificate up to the plinth at least, along with registration form which has not been enclosed by the respondents. However, a software developed by MahaRERA has not made it mandatory to enclose commencement certificate and that is why the respondents have not enclosed it. They cannot be blamed for this legal lapse. In my opinion compliance of this legal provision is necessary. It is the right time to bring reform in the system which may cause some hardship at beginning to some promoters but it is necessary for the healthy growth of housing industry. Therefore, it becomes necessary to direct the respondents to enclose commencement certificate and to direct the Secretary of MahaRERA also to make necessary changes in the software to ensure the enclosure of commencement certificate.

Point no.2 uploading wrong date of possession/completion.

17. While narrating the facts of the cases, I have already referred to the agreed dates of possession and the dates of completion of their projects mentioned by the respondents. These dates are different. Therefore, the complainants apprehend that they shall not get the possession of the flats on the agreed dates. The Hon'ble Bombay High Court has recently held in **Nilkamal Realtors**



Suburban Pvt. Ltd. – v/s – Union of India & Ors. in Writ Petition No. 2737 of 2017 of Ordinary Civil Jurisdiction, that Section 18 is retroactive and RERA is applicable to the disputes arising out of the agreements for sale, though they were executed prior to coming in force of RERA. It has been further clarified by the Hon'ble High Court that the dates of possession mentioned in the agreement for sale shall be the relevant date as RERA does not contemplate rewriting of contract executed between the flat purchaser and promoter. So I hold that the dates of completion of the project mentioned by the promoters at the time of registration of project would be for the information of the prospective buyers. The allottees who have already booked their flats before registration of the project, shall be governed by their respective agreements for sale, this is one aspect of the matter.

18. Other aspect is, Section 4 (2)(C) of RERA empowers the promoters to declare the time period within which he undertakes to complete the project or phase thereof. Though the respondents have mentioned different dates of completion of their project than those mentioned in the agreements of the complainants, the respondents cannot be said to have contravened Section 4 of RERA alleging that they have furnished false dates of completion of the project.

Point no.3. Registration of separate towers and false/ incorrect statements.

19. Complainants contend that approved plan shows that entire phase 1 has been approved which consists of R1& R2 and respondents have agreed to develop it in its entirety but respondents have registered towers as separate projects. According to them, this contravenes section 12 of RERA. In order to understand this issue in its perspective, it is necessary to read the explanation appended to Section 3 of RERA. It reads as under-

‘Explanation- For the purpose of this Section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.’

Maharashtra Real Estate (Regulation and Development) (Registration of Real Estates Projects, Registration of Real Estate Agents. Rate of Interest and Disclosures on Website) Rules, 2017 defines phase of real estate project as under.

‘Phase of real estate project’ may consist of a building or a wing of the building in case of building with multiple wings or defined number of floors in multi-storeyed building / wing.




20. After considering these provisions, I find that registration of one tower as standalone project is permissible in law. I record my finding to hold that respondents have not contravened section 12 of RERA by registering towers separately.

21. Real grievance of the complainants is, even on completion of a single tower, it would not be possible to reside therein unless and until all the amenities agreed by the respondents are provided. According to them, those amenities can be provided only when the entire phase-I shown in the approved plan would be completed. However, the respondents have assured the complainants that all the amenities promised by them shall be provided on completion their flats. In view of these facts, I do not find that the complainants have contravened Section 12 of RERA as alleged by the complainants.

22. The complainants have relied upon the advertisements brochures and the information provided by the respondents to MahaRERA while registering their project to allege that the information contained therein is different from each other. They contend that they are ditched as they relied upon advertisements and representations of the respondents which are different than those contained in their agreements. The respondents have relied upon clause 17.08.12 of the agreement which provides, 'this agreement constitutes and is the repository of the entire agreement between the parties relating to the subject matter and supersedes and cancels all previous agreements, negotiations and representations in respect thereto.' The crucial question is, whether the earlier negotiations, representations either oral written or in electronic form shall be superseded, cancelled or not. My answer is, when both the parties have subsequently executed the registered agreement for sale then the terms and conditions contained therein shall prevail as it is a renovation of a contract. Hence, it is not necessary for me to discuss about those representations negotiations which were earlier and subsequent to the agreements for sale. There is no case of complainants that the agreements contain any false statement. Hence this allegation also fails.

Point 4-Formation of society/ association of allottees.

23. Respondents have relied upon the provisions of MOFA to contend that the society can be formed on completion of the last building. Section 10 of MOFA provides that as soon as minimum number of persons required to form a co-operative society is attained, the promoter shall within prescribed period (this period is of four months) submit the application for registration of society / organisation. Section 11(1)(e) casts a duty on promoter to form an association or society of the allottees within three months of the majority of allottees have



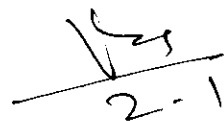
booked their apartments. In this case more than 50% of the apartments in the registered projects have been booked, hence the respondents are liable to form association/ society of the allottees within four months from such booking, as the local law MOFA prescribes the period of four months. Respondents are ready to form the society.

Point no.5- Entitlement of complainants.

24. In view of findings recorded on the above points, the complainants are not entitled to get any monetary relief, except the cost of complaints amounting to Rs. 20, 000/ each. They are at liberty to file fresh complaints on respondents' failure to comply with the directions given below. Suitable directions are being issued to meet the ends of justice. Hence the order.

Order.

- a. The respondents shall deliver the possession of the booked flats of the complainants on or before the agreed dates mentioned in their agreements for sale with all the amenities agreed to be provided.
- b. Complainants' claim for monetary relief is rejected.
- c. The respondents shall form the society of the allottees within two months from this order and the allottees shall co-operate with them for it.
- d. The respondents shall upload the commencement certificate/s as mandated by Section 4(2)(c) of RERA within a month from this order.
- e. Secretary of MahaRERA to take steps to make necessary changes in the software to ensure the enclosure of commencement certificate while registering projects.
- f. Respondents shall pay each complainant Rs. 20,000/- towards the cost of complaint/s.


2-1-18

(B.D. KAPADNIS)

Mumbai
Date: 02.01.2018

Member & Adjudicating Officer,
MahaRERA, Mumbai.