

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

COMPLAINT No: CC00600000055382

Mr. Sudhir Kaushik

..... Complainant

Versus

M/s. Akruti GM Joint Venture

M/s. Hubtown Limited

MahaRERA Registration No. P51800009175

..... Respondents.

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


Adv. Rama Subramanyam appeared for Complainant.

Adv. Sandip Mullik appeared for the respondents.

ORDER

(21st December, 2018)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to hand over possession of the flat and also to pay interest at the rate of 18% from the date of payment till the actual date of possession in respect of booking of a flat No. 303, on 3rd floor in Wing-A of the respondent's Project known as "**Hubtown Serene**" bearing MahaRERA Regn. No. P51800009175 at Bandra (East), Mumbai.
2. The matter was heard on several occasions and the same was heard finally on 19-09-2018, when both the parties have directed to file their respective written submissions on record of MahaRERA within a week.
3. The complainant has argued that he had purchased the said flat along with one car parking space for a total consideration amount of Rs. 1,63,75,000/-. At the time of booking, the respondent No. 1 issued provisional allotment letter dated 7th June 2011 and agreed to execute agreement for sale with him. Till date, he has paid 50% amount to the respondent. According to the said allotment letter, the respondent No. 1 was liable to handover possession of the said flat to the complainant within a period of 42 months from the date of issuance of the same. The respondent No. 1 at the time of booking



has informed him that all the requisite permissions were in place and the construction will be completed as promised. Accordingly, demands were raised by the respondent from time to time and he has paid 50% amount towards the cost of the said flat.

4. The complainant further argued that he used common sales and other customer representative staff between the Respondent No.1 and Respondent No. 2 company for the purpose of marketing the said project. Therefore, the respondent No. 2 has been equally responsible and liable along with the respondent No. 1 for the cheating, fraud, misappropriation of funds, breach of trust etc. and also violations in terms of MOFA and now under the RERA Act and rules, which hold the respondent No. 1 and / or respondent No. 2 or both responsible and liable both under civil and criminal law.
5. The respondents has disputed the claim of the complainant and argued that the complainant has not come before this Authority with clean hand and has suppressed the material fact that the project has no commencement certificate. The respondent further argued that in the said project only 4 flats have been sold out on the basis of IOD issued by the competent authority. However, after commencement of RERA Act, 2016 he has not sold any single flat in the said project. The respondent further argued that as per clause No. 4 of the provisional allotment letter dated, he was liable to complete the said building within a period of 42 months from the date all approvals are received from the competent authority.
6. Since there is no commencement certificate has been issued by the competent authority, no question of date of completion being over. The respondent further argued that since the said project was stuck due to several issues and therefore in the year 2014 itself, he informed the complainant to take refund along with interest. However, the complainant refused to accept the same. Therefore, now the complainant can not approach this Authority for any alternate prayer. The respondent therefore



stated that there is no violation of any of the provision of RERA Act, 2016 and hence requested for dismissal of this complaint.

7. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, admittedly, the complainant has booked the flat in the year 2011 in the project undertaken by the respondent No. 1 and he has paid around 50% booking amount towards the cost of the said flat as per the payment schedule mentioned in the provisional allotment letter. The said booking was done under the provisions of MOFA Act, 2011 on the basis of plans approved by the competent authority. As per clause No. 4 of the provisional allotment letter dated 7th June, 2011, the respondent No. 1 agreed to complete the said building within a period of 42 months from the date all approvals received by him. The respondent No. 1 has argued that till date there is no commencement certificate issued by the competent authority and therefore there is no violation of clause No. 4 of the allotment letter. The complainant has not disputed the fact that there is no commencement certificate. The complainant has alleged that the respondent No. 1 has represented him that all permissions have been obtained for the said project. However, the complainant has not produced any documentary evidence to prove the said fact. Even the provisional allotment letter does not mentioned anything about the commencement certificate.
8. The complainant is now seeking interest for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016. In this regard, the MahaRERA feels that there is no agreement for sale executed between the complainant and the respondent No. 1. Even in the provisional allotment letter the date of completion of the building is mentioned as 42 months from the date all approvals have been received by the respondent No. 1 and admittedly there is no commencement certificate issued for the said project. Therefore there is no violation of the provision of section 18 of the RERA Act, 2016 and hence the complainant can not seek relief interest as prayed for.

9. With regard to the relief sought by the complainant about refund along with the interest @ the rate of 18% and compensation, the MahaRERA feels that there is no provision in the RERA Act, 2016 to grant such interest rate. Moreover, since there is no violation in the provision of section 18 of the RERA Act, 2016, the complainant can not seek compensation.
10. The MahaRERA feels that, if the complainant doesn't want to continue in the said project, the respondent No. 1 may refund the amount paid by the complainant along with the interest as offered to the complainant in the year 2014.
11. The MahaRERA further directs that the interim order dated 28th August, 2018 passed by the MahaRERA restraining the respondent No. 1 from selling any flat in the project shall remain in force till the commencement certificate is obtained by the respondent No. 1.
12. In the light of these facts the complaint stands disposed of.



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