

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

COMPLAINT No: CC006000000023643

Mrs. Mala Sen

..... Complainant

Versus

1. Ahimsa Builder

2. Mr. Amit Patel

..... Respondents.

MahaRERA Registration No. P51800007486

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

Adv. Sandip Karu a/w Adv. Dinesh Mishra appeared for the complainant.

Adv. Sanjay Chaturvedi appeared for the Respondent No. 1.

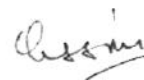
Adv. Robin Fernandes appeared for the respondent No. 2.

Adv. Dipti Mehta appeared for the respondent.

ORDER

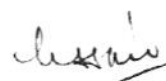
(16th November, 2018)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to handover possession of the flat to her and also to pay interest for the delayed possession in respect of the booking of a flat No. 304 in the respondent's project known as "**Ahimsa Heights**" bearing MahaRERA Registration No. P51800007486 at Malad (West) Mumbai.
2. The matter was heard on several occasions when both the parties sought time to settle the matter amicably. However, inspite of several meetings the parties could not arrive at mutually agreeable terms. Hence, this matter is decided on merits.
3. During the hearing, the complainant has argued that as per the agreement, she had purchased flats bearing No. B-601 & B-602 in the "**West End project**" of the respondent No. 2. However, he could not complete the said project and hence he sold the FSI for the said building to the respondent No. 1 Ahimsa Builders without any consent from the complainant. Later, despite various complaints and follow ups the promoter didn't respond and finally agreed to give the flat No. 304 in the new project known as "**Ahimsa Heights**",



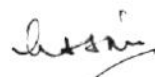
in lieu of B-601 and B-602 in West End. The promised new project is already ready, but the respondent is now denying possession to the complainant. Hence this complaint.

4. The respondent No. 1 namely Ahimsa Builder has argued that the complainant is not an allottee as per the definition of section 2 (d) of the RERA Act and even he has neither entered into any contractual obligation with the complainant nor issued any allotment letter to the complainant. He further argued that the said project has been assigned to him by the respondent No.2 namely Mr. Anil Patel and he has to fulfill the contractual obligations towards the transfer of the development rights to him. During the negotiations, he assured the respondent No.2 that he will reserve flat No. C/304 for him if he fulfills the contractual obligations and now the respondent No. 1 and 2 are under arbitration proceedings and therefore, he cannot allot flat No. C/304 to the complainants.
5. He further argued that he does not recognize the respondent No. 2 as a co-promoter of the project. He further argued that he has not received sale consideration from the respondent No.2 and therefore, he is not bound to convey or execute any agreement for sale with the complainant. He further argued that a mere internal letter given by the respondent No.2 assuring that the flat is reserved for it, cannot be construed as an allotment letter or any kind of agreement between the complainant and respondent No.1. He, therefore, requested for dismissal of this complaint.
6. During the hearing, the respondent No.2 has argued that the present complaint is not maintainable since there is no allotment letter or registered agreement of sale with the complainant. The respondent No.2 has offered the complainant the flat bearing No. C/304 subject to payment of Rs.14 lakhs and plus other extra charges towards the society dues and stamp duty, registration etc. However, the complainant refused to accept the said offer.
7. The MahaRERA has examined the arguments submitted by all concerned parties as well as the record. In the present case, the complainant is seeking interest for the delayed possession from the respondent as well as possession



of flat No. C/304 and compensation for lesser area of 100 sq.ft. as per registered agreement for sale in respect of exchange of flat No. B-601 and B-602. It is admitted fact that the complainant had earlier purchased two flats bearing B-601 and B-602 from the respondent No.2 and the registered agreement for sale was duly registered on 20th April, 2006 wherein the date of possession was mentioned as 31st December, 2007 in the respondent No.2's project known as 'West End'. The said project was not processed further by the respondent No.2 and therefore, the respondent No. 2 had promised the complainant to allot the flat bearing no. C/304 in the project by the respondent No.1. The said project was earlier implemented by the respondent No.2 which was transferred to respondent No.1 in the year 2009. Now the said project has been taken over by the respondent No.1 from the respondent No.2 and due to non compliance of the obligation by the respondent No.2 the arbitration proceeding is pending before the arbitrator.

8. In the present case, the complainant is seeking possession of the above promised flat No. C/304 in the respondent's project known as 'West End.' However, she has not produced any documentary proof to show that the said flat was allotted to her by the respondent No.2. In this complaint, the complainant has relied upon the letter dated 30th December 2013 wherein the respondent No. 2 has agreed to allot another flat bearing No. C/304. However, no final allotment letter came to be issued for allotment of the said flat. The complainant has also relied upon the settlement deed executed before the Maharashtra State Commission for Women wherein the respondent No. 2 agreed to pay the stamp duty and registration charges of the flat No. C/304. However, inspite of such a commitment, no allotment letter for this flat was issued to the complainant till date. The date of possession mentioned in the earlier agreement for sale executed in 2006 between the complainant and respondent lapsed in the year 2007.
9. In the present case admittedly, the respondent No.2 who is the original developer had handed over this project to the respondent no.1 by selling the FSI to the respondent No.1 who has registered this project with MahaRERA. Further, the same project was taken ahead by the respondent No.1. The registered agreement for sale executed with the complainant has not been

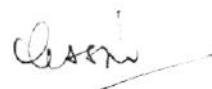


terminated nor the money paid by the complainants was refunded till date. However, due to change in the plans of the building, the respondent No.2 issued the allotment letter for another flat bearing No. 304 in the said project. The MahaRERA therefore feels that the complainant is a lawful allottee in the project of the respondents. Moreover, during the hearing the respondent No.2 has accepted the claim of the complainant and agreed to allot flat No. 304 to the complainant subject to the payment of Rs.14 lakhs which the respondent No.1 has disputed.

10. In this regard the MahaRERA feels that the respondent N.1 who has taken over this project from the respondent No.2 is bound to take all liabilities in respect of the said project including that of the complainant. Moreover, in the earlier agreements executed between the complainant and respondent has not attained finality and the money paid by the complainant has not been refunded and therefore, the complainant to seek flat agreed upon by the respondent N.2 i.e. flat No. 304.

11. In view of the said facts, the respondents are directed to execute registered agreement for sale with the complainant for Flat No. 304 subject to payment of Rs.10 Lakhs as agreed upon by the Advocate for complainant during the hearing. Since the arbitration petition is pending before the Hon'ble High Court, the agreement be executed after final disposal of the said proceeding.

12. In view of the aforesaid directions, the complaint stands disposed of.



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