BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000089566

Mrs. Jayanthi Rani Ramachandran & Mr. Ramachandran Karuppiah ..Complainant/s

Vs

Shree Sadguru & Deluxe JV ..Respondent/s

MahaRERA Project Registration No.P51900005370

Coram: Shri A. L. Alaspurkar,
Hon'ble, Adjudicating Officer, MahaRERA.

Appearance:
Complainant/s: Adv.Sunil Kewalramani
Respondent/s : Adv. Jeet Gandhi.

ORDER
(13.09.2022)

1. The complainants have filed this complaint of which the facts can be summarise as follows :

(i) That in the year 2011 one estate agent viz. Trikal Theaters and Reality India Pvt. Ltd. approached the complainants on behalf of the respondent developer. The said estate agent represented that one project at Worli Mumbai by name "Neumec" has been introduced by the Respondent and further represented that flats are available between 26th and 35th floor and possession would be given by December, 2013. A brochure was also given. On the information given by the said estate agent, the complainants booked a flat of 3BHK measuring 1600 sq. ft. super built up area. The rate agreed was Rs.16,375/- per sq. ft. The flat was in a sale building to be constructed in the said project. The agreed consideration was Rs.2.62 cr. The complainant paid amount of Rs.39 lakhs on 23.09.2011 by two cheques issued in the name of the said estate agent. This was a booking amount. Between the period from 23.09.2011 and 20.10.2013, the complainants have paid Rs.1.50 Cr to the said estate agent towards part consideration which includes the booking amount. On 27.12.2013, the complainants paid to the respondent Rs. 4 lakhs towards service tax. Thereafter, the complainants were following up for issuance of allotment letter and for allotting flat between 26 and 35th floors. However the respondent was

delaying in issuing the such allotment letters. In November, 2015 respondent asked complainants to make further payment of Rs.24 lakhs. The said amount was paid on 09.12.2015. And on the same day they also paid Rs.2,60,600/- as service tax to the respondent. The respondent issued letter of allotment dt. 10.12..2015 showing total consideration of the flat as Rs.2.72 cr. The specific flat numbers and floor numbers were not mentioned in the allotment letter. The respondent has refused to mentioned the same. The complainants were compelled to accept the said allotment letters. The complainants also requested to enter into agreement to sale. The respondent refused to do so and told them that they have not entered into any agreement with any of the buyers. The respondents were also threatening to cancel the booking of the flat.

On 31.08.2017, there was discussion between the complainants and respondent. The respondent thereafter allowed a rebate for early payment and discounted the cost by Rs.10 lakhs. A supplementary allotment letter was issued dated 31.08.2017 showing total consideration of Rs.2.62 cr.

In the month of October, 2018 on request of the respondent, complainants had discussions with the respondent. They were informed that the sanctioned plan and specification of the said project are to be modified and now the respondent will not construct 3 BHK flats of 1600 sq. ft. super built up area They were also informed that 2 BHK flats adm. 900 sq. ft. super built up area (584 sq. ft carpet area) would be constructed. They were also assured that respondent will refund the excess money amounting to Rs.26,62,500/-. The complainants had denied to give such consent for amending the sanctioned plan.

In application to MahaRERA, in respect of the said project, a new name was shown as 'Corner Stone' .

By reduction of area from 1600 sq. ft. to 900 sq. ft. the complainants were deprived of area of 700 sq ft. On 26.11.2018 complainants filed complaint before the MahaRERA being complainant no. 21522. Respondent offered 2 BHK flats, measuring 900 sq. ft. on 7th floor and offered to refund the excess amount without interest. The said offer was not accepted by the complainants. The conciliation has failed. The Complainant thereafter filed the present complaint no 89566 and prayed for following relief:

(a) That the respondent be directed to allot a 2 BHK flat admeasuring 900 sq. ft super built up area between 26th to 35th floor to the complainants, as per the

commitment made by the respondent's Real Estate Agent Trikal and the provisions of RERA and rules made thereunder;

(b) That the respondent be directed to enter into registered "Agreement for Sale" with complainants as they have paid more than 66% of the total consideration amount, as per provision of Section 13 of RERA.

(c) That the respondent be directed, under section 18 of RERA to pay interest on account of delayed possession at the rate of (2% +SBI's highest MCLR) to the complainants on the amount of Rs.1,47,37,500/- (Rupees One crore forty seven lakhs thirty seven thousand five hundred only) starting from January, 2014 till the possession of the flat is handed over to the complainants with Occupancy Certificate.

(d) That the respondent be directed under Section 12 and 18 of RERA to pay compensation of Rs.48,86,760/- (Rupees forty eight lakhs eighty six thousand seven hundred sixty only) to the complainants, towards loss of opportunity.

(e) That the respondent be directed to pay the said excess amount of Rs.26,62,500/- (Rupees Twenty six lakhs sixty two thousand five hundred only) alongwith interest (2% +SBI's highest MCLR) to the complainants, starting from 19.12.2015 till the realisaiton of the amount.

(f) That the respondent be directed to pay compensation of Rs.2,00,000/- to the complainants towards inconvenience, mental trauma and harassment caused to the complainants.

(g) That the respondent be directed to pay Rs.60,000/- to the complainants, towards cost of complaint.

(h) That the respondent be directed to produce the documents showing the consent taken by him of at least two-third allottees as per the provisions of Section 14 of RERA to amend sanctioned plans and layout plans.

2. The respondent filed affidavit in reply dated 29.06.2021. All the adverse contention are denied by the respondent. It is pleaded that the respondent had to modify the plan with consent of 2/3rd of the allottees . accordingly, now they will not be constructing 3 BHK flats with 1600 sq. ft. super built up area. The respondent were always ready and willing to allot 2 BHK flat bearing flat no.1203 measuring 964 sq. ft. super built up area on 12th floor in the Corner Stone Project. The respondent has also agreed to refund the excess of consideration amounting to Rs.16,14,500/-.

3. In the allotment letters dated 10.12.2015 and 31.08.2017 it is nowhere mentioned that the respondent agrees to allot a flat between 26 and 35th floors. In the order dated 19.12.2019, the Tribunal has also confirmed it does not have jurisdiction to grant such relief. It is further

pleaded that "Trikal" is not a agent or representative of the respondent nor the respondent is anyway concerned with the said agent. Complainants have purchased the flat as investors and not bonafide purchasers. The complainants have never objected to any change and now they are estopped from doing so. The sanctioned plan was amended in 2018 and as such flat area have been reduced and now the construction would be 2BHK flats. The sanctioned plan was amended with the consent of more than 2/3rd of the allottees. As per clause no. 7 of the allotment letter, the complainants have given consent to any change in the plans, layout, design etc. As such the revised plan is binding on the complainants and all the allottees. Hence, there is no violation of Section 14 of RERA. The complainants were not ready and willing to accept and enter into agreement for sale of modified flat. As per the application submitted to MahaRERA the date of completion is 30.12.2023 and as such there is no delay.

4. The matter was heard by Hon'ble member 1. Considering the joint application filed by the parties, order dated 23.08.2019 was passed. The matter was referred to AO for deciding the compensation issue u/s section 12 and 15 of RERA and other prayers u/s 13 & 18 of RERA were reserved to be decided by the Authority.

5. The then Ld. AO heard the matter and held that prayers as to allotment of the flats are not within the jurisdiction and the same was rejected. The matter was again taken up by the Hon'ble Member-1. After considering all the facts in detail, following order has been passed on 01.07.2022.

   (a) The respondent is directed to allot another flat to the complainants between 26th floor till 35th floor and execute the registered agreement for sale with these complainants within a period of 30 days from the date of the order.

   (b) The respondent is also directed to refund the money with interest to the complainants for shortfall in area provided by the respondent admeasuring 700 sq. ft.

   (c) The respondent is also directed to pay interest as prescribed under RERA to the complainants for the delayed period of possession from the date of commencement of RERA i.e. 1.1.2017 till the actual date of possession.

   (d) To decide the claim of compensation sought by the complainants under section 12 / 18 of the RERA, the present complaint be referred to Ld. Adjudicating Officer, MahaRERA to take appropriate decision u/s 71 and 72 of the RERA.

6. Now points for determination is :

a. Is whether the complainants are entitled to compensation as sought? — Affirmative

b. If yes, what amount? — As per final order.

REASONS

7. The complainants have claimed various reliefs as mentioned in the summary of the facts. After considering the same, the Hon'ble Member passed order dt. 01.07.2022 and the reliefs are granted as mentioned above. To decide the issue regarding the compensation, the complaint has been transferred to the adjudicating Officer, with direction to consider the prayers in that behalf u/s 12/18 of RERA.

8. The complainant has claimed compensation of Rs. 48,86,770/-, on account of loss of opportunity. So far as this aspect is concern, it is the undisputed fact that the complainants have made substantial payments to the respondent for booking a flat adm. 1600 sq. ft. super built up area. The flat was with the facilities of 3 BHK. From all the transaction between the parties as well as the allotment letter issued by the respondent it is apparent that the representation to the complainants was for allotment of the flat admeasuring 1600 sq. ft area. This representation has not been honored by the Respondent. Ultimately, there was a change in the plan and the developer agreed to give a flat with a super built up area of about 900 sq. ft. All the relevant facts in that respect are considered in the order dated 01.07.2022 referred to above. Admittedly the flat finally offered is of 2BHK facilities. The complainants have also finally decided to accept the said 2BHK flat with 900 sq. ft. area and not withdrawn from the said project. It is required to be taken note of that the complainants have paid the consideration and were expecting the bigger flat than which was required to be accepted by them. The respondent has also agreed to return the excess consideration. In the circumstances, it cannot be said that the complainants accepted the said proposal without compelling circumstances. There was attempt for conciliation in complaint no. 21522 and the said conciliation had failed before filing of this complaint. Therefore, this is a clear case of loss of opportunity to use a bigger flat of 1600 sq. ft. area and had to accept the flat of 900 sq. ft. area. In the circumstances, the compensation as to loss of opportunity as to comfortable use for the complainants and their family members. This will be leading to loss of 1 bedroom and total area of 700 sq. ft.

9. For this purpose, the complainants have pleaded that when the flat was booked in the year 2013, the ready reckoner rate of the locality was Rs.1,81,900/- sq. mtr. However, the present rate i.e in the year 2019-20 is Rs.2,79,400/- per sq. mtr. The loss of area is equivalent to 50.64 sq. mtrs. On the basis of difference, the complainants have claimed compensation of Rs.48,86,760/-. It is pleaded by the complainants if they have to purchase that much area, they will have to spend the equivalent amount for the same. It is not case of complainants that for any reason there is compulsion to purchase another flat, of 700 sq. ft. neither they have purchased the flat as such. Considering this aspect of the matter, the compensation cannot be granted on the basis of price difference, but for loss of opportunity and loss of comfort for the lifelong user competition of Rs.14 lakhs will meet the ends of justice. In my opinion it will be a good equitable relief.
10. The complainants have also claimed, amount of Rs.2 lakhs on account of mental trauma and harassment. This definitely a mental trauma and agony when one has to bear the discomfort after making substantial payments since 2013 and as such compensation of Rs.1 lakhs would be a equitable relief.

ORDER

1. The respondent is directed to pay compensation of Rs.15 lakhs alongwith the interest at the rate of 10% p.a. from the date of this order, till the final payment of the said amount.
2. No order as to costs.

13-9-2022

Date : 13.09.2022
Mumbai

(Ashok Alaspurkar)
Adjudicating Officer,
MahaRERA

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000089566

Mrs. Jayanthi Rani Ramachandran

Mr. Ramachandran Karuppiah .... Complainants

Versus

Shree Sadguru & Deluxe JV .... Respondent

MahaRERA Project Registration No. P51900005370

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA

Ld. Adv. Sunil K. appeared for the complainants.

Ld. Adv. Ruchi appeared for the respondent.

ORDER

(Friday, 1st July, 2022)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondents to allot a 2 BHK Flat admeasuring 900 sq. ft. super built-up area between 26th to 35th floor under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of an earlier booking of a 3 BHK Flat admeasuring 1,600 sq. ft. super built-up area in the respondent's registered project known as **"Cornerstone"** bearing MahaRERA registration No. **P51900005370** located at Gandhi Nagar, Worli, Mumbai. The complainants further prayed that the respondent be directed to enter into registered

"agreement for sale" with them as they have paid more than 66% of the total consideration amount, as per the provision of section 13 of RERA and to pay interest for the delayed possession under section 18 of the RERA.

2. This complaint was heard finally on 14-06-2022 as per the Standard Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, both the parties appeared for the said hearing. After hearing the arguments of both the parties, the matter was reserved for the orders.

3. In the present case, the complainants have contended that they have booked one flat admeasuring 1600sq.ft carpet area on 25/09/2011 in the respondent's project for a total consideration amount of Rs. 2,62,00,000/. At that time, they paid Rs. 1,74,00,000/- till December 2015, which is more than 66% of the total cost. Despite accepting the more than 20% amount from them, the respondent promoter refused to enter into an agreement for sale with them. However, it has issued an allotment letter dated 10/12/2015 for the said booking. They further stated that they have booked the said flat through an agent one Trikaal, who informed them that the possession would be handed over to them on or before 31-12-2013.

4. They further stated that as per the said allotment letter, the respondent was supposed to allot a 3 BHK flat to them between 26th to 35th floor. However, subsequently, it has amended the sanctioned

plans without their consent and it is now constructing only 2 BHK flats in the said building having area admeasuring 900 sq. ft. super built-up area. Therefore, the complainants have been compelled to lose area admeasuring about 700 sq. ft. super built-up area. They further stated that they want to continue in the project with respect 2 BHK flat admeasuring 900 sq. ft. super built-up area.

5. They further stated that since they were not handed over possession of their flat as per agreed date committed to them, they had filed MahaRERA Conciliation Request No. CR006000000021522 before MahaRERA. In the reconciliation the complainants agreed to accept a 2 BHK on condition that the flat would be allotted between 26th to 35th floor and excess money paid by them be returned with interest and interest for delayed possession of the flat be also paid to them. However, the respondent agreed to allot a 2BHK flat on the 7th floor and to return excess money without interest. Hence the conciliation between them was failed. In view of these facts mentioned above, the complainants prayed for directions to the respondent allot a 2 BHK flat admeasuring 900 sq. ft. super built-up area between 26th to 35th floor to the complainants, as per the commitment made by respondent's agent Trikaal under the provisions of RERA and rules made there under, and enter into registered agreement for sale with them as they have paid more than 66 % of the total consideration amount, as per the provision of section 13 of RERA and the respondent be directed, under section 18 of RERA, to pay interest on account of delayed possession, to the complainants on the amount of Rs.1,47,37,500/- starting from January, 2014, till the possession of the flat is handed-over to the complainants with occupancy certificate

and that the respondent be directed under sections 12 and 18 of RERA to pay compensation of Rs.48,86,760/- to the complainants, towards loss of opportunity. The respondent be directed not to create third party rights for the said flat.

6. The respondent has refuted the claim of the complainants and filed its affidavit in reply stating that it had to modify the plan with the 2/3rd consent of the remaining allottees and accordingly now there are no 3 BHK flats adm. 1600 sq.ft. super built up area available in the said project however, it has informed the complainants that they would comply with their obligation and therefore had agreed to allot a 2 BHK flat adm. 964 sq.ft super built up area on the 12th floor in project known as 'Cornerstone' (formerly known as Neumec Interlude) at Worli, Mumbai instead of the old flat and refund the excess amount but at no point of time did the respondents agree to allot a flat between the 26th to 35th floor and hence the reliefs sought by them is without any just cause and basis. It stated that when the sanctioned plans were amended and the area of the flat stood reduced, the complainants were offered refund of the said sum which was refused by them and hence they cannot now seek to penalize the respondent by asking for interest on the refund amount. The respondent has denied the contentions of the complaint parawise and stated that they have failed to make out any case for grant of any relief and pray that the complaint be dismissed with costs.

7. The complainants have filed their affidavit in rejoinder on record on 10-10-2021 stating that the respondent has not taken complainants' individual consent as per section 14(2)(i) of RERA before changing/

amending the sanctioned plans of the said flat but was having consent of 13 allottees out of total 21 (approx. 61.90% consent). The respondent has violated section 4 of the MOFA and section 13 of the RERA by not entering into agreement for sale with them even though they have paid more than 66% amount i.e Rs.2,62,00,000/-. Further, the respondent has committed a wrongful act by not mentioning the possession date of the flat in the allotment letter dated 10/12/2015 and supplementary allotment letter dated 31/8/2017. The complainants therefore prayed to allow the complaint.

8. The MahaRERA has examined the submission made by both the parties and also perused the available record. In the present case by filing this complaint, the complainants have approached MahaRERA seeking reliefs under section 12, 13 and 18 of the RERA for execution of agreement for sale, possession along with interest and the compensation for mental agony.

9. The said claim has been refuted by the respondent by filing its reply on record of MahaRERA. It has mainly contended that it has modified the plan with 2/3rd consent of the allottees and hence allotted another flat on 12th floor of the said building. It has further stated that it is ready and willing to refund the excess amount to the complainants without any interest and it has never committed any flat to them between 26th floor to 35th floor.

10. In the present case on analytic consideration of the submissions made by both the parties, it is admitted fact that the complainants are allottees of this project and have paid the money for booking of their

flat in this project in the year 2011 and admittedly, they have paid an amount of Rs. 1,74,00,000/- to the respondent for the booking of their flat.

11. The complainants have produced a copy of allotment letter dated 10-12-2015, duly signed and issued by the respondent promoter. On bare perusal of the said allotment letter, prima facie it appears that the respondent promoter has allotted a flat having 1600 sq. ft. super built-up area for total consideration amount of Rs. 2,72,00,000/-. In the said letter, the respondent has acknowledged the payment made by the complainant of Rs. 1,74,00,000/- towards the earnest money and the balance payment of Rs. 98,00,000/- to be paid in instalments on commencement of constructions. Even, the respondent has confirmed the said booking of the said flat having area admeasuring 1600 sq. ft. built up area by issuing subsequent letter dated 31-08-2017 and in the said letter it has rebated an amount of Rs. 10,00,000/- to the complainants and thereby reduced the balance consideration amount of Rs. 98,00,000/- to Rs. 88,00,000/-.

12. Admittedly, the said booking was done under the provisions of MOFA for which the allotment letter was duly issued on 10-12-2015. It is also an admitted fact that the complainants have made total payment of Rs.1,74,00,000/- towards the consideration of the said flat out of total consideration amount of Rs. 2,72,00,000/-. It shows that the complainants has made around 66% of the total consideration of the said flat.

13. In this regard, the MahaRERA has perused the prevailing provision of

section 4(1) of the MOFA, in which the said booking was done. The said provision reads as under:

"4. (1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under 4{the Registration xvi of Act, 1908 (hereinafter in this section referred to as "the Registration Act")] 1908. 5[and such agreement shall be in the prescribed form.]."

14. The aforesaid explicit provision of MOFA clearly provides that the promoter is not entitled to accept advance more than 20% of the total consideration without first registering the agreement for sale. However, in the present case, the respondent has failed to adhere to the said explicit provision of MOFA and accepted the money from the complainants in violation of the said prevailing law.

15. Even, after commencement of RERA, the respondent has registered this project with MahaRERA under the provision of section 3 of the RERA, this being an ongoing project. Despite confirming the said allotment letter dated 10-01-22015 by issuing subsequent letter dated 31-08-2017, the respondent has failed to comply with the requisite provision of section 13 of the RERA, which reads as under**:**

"13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force".

16. However, the respondent in this case, continued its default started under MOFA and has failed to execute the registered agreement for sale with the complainant under section 13 of the RERA. It shows that the respondent has violated the provisions of both MOFA as well as RERA. Further, it is settled principle of law that the party in default cannot be permitted to seek any equity from the court of law.

17. In addition to this the MahaRERA has also noticed that the complainants have alleged that the said booking was done through the agent of the respondent one Trikal. The said fact has not been denied by the respondent. On the contrary, it has accepted the said booking by issuing the aforesaid 2 letters dated 10-12-2015 and 31-08-2017. The said agent has issued a letter to these complainants received by them on 04/04/2019, and represented that they will be given 3 BHK flat between 26th to 35th floor of the said building. The respondent, though has accepted the booking done by the said agent, it is also liable to accept the commitment done by the said agent on its behalf. Hence, the MahaRERA is of the view that the complainants are entitled to seek a flat as per the commitment made by the said agent between 26th floor to 35th floor. Hence, the MahaRERA is of the view that there is substance in the claim agitated

by the complainants in this regard.

18. As far as the claim of interest agitated by the complainants under section 18 of the RERA, the MahaRERA is of the view that admittedly there is no registered agreement for sale signed and executed between both the parties nor any agreed date of possession is mentioned in the allotment letter dated 10-12-2015 issued by the respondent. Though the allotment was done to these complainants in the year 2015, till date the flat has not been handed over to the complainants for last 7 years. The Hon'ble Apex Court in its various judgements has held that the reasonable period for completion of the project is 3 years. The respondent has not cited stated any justified reasons for the delay in execution of the registered agreement for sale even after accepting more than 20% amount from the complainants under the prevailing provisions of MOFA. Even after commencement of RERA, the respondent failed to execute the registered agreement for sale with the complainants. Hence, the MahaRERA is of the view that the respondent promoter has violated the prevailing provisions of MOFA as well as RERA and hence, the complainants need to be compensated by way of interest for such huge delay on the part of the respondent.

19. As far as the claim agitated by the complainants towards the compensation for mental agony, the MahaRERA has noticed that the respondent, even after commencements of RERA has issued a letter dated 31-08-2017 and confirmed the allotment of a flat having an area admeasuring 1600 sq. ft. super built up. Believing the said representation, they continued the said booking. However,

subsequently, the respondent has made out the case of modifications of the sanctioned plan, due to which it is unable to allot the flat admeasuring 1600 sq. ft. Built up. It clearly shows that there is misrepresentation by the respondent to these complainants even after commencement of RERA. Hence, the MahaRERA is of the view that the complainants are entitled to seek refund of the shortfall in area and also compensation for violation of section 12 of the RERA.

20. Moreover, in the matter of Neelkamal Realtors Vs. State of Maharashtra & Ors in Writ Petition No. 2737 of 2017 decided on 6th December, 2017, the Hon'ble Court discussed the eventualities creeping in and the suffering of the allottees/ flat purchasers. Complying with the said observations in the judgment, it squarely meets that complainants' allottees need to be compensated by way of interest for any inaction on the part of the promoter.

21. Considering these facts and circumstances of this case, the following order is passed: -

a. The respondent is directed to allot another flat to the complainants between 26th floor till 35th floor and execute the registered agreement for sale with these complainants within a period of 30 days from the date of this order.

b. The respondent is also directed to refund the money with interest to the complainants for shortfall in area provided by the respondent admeasuring 700 sq. ft.

c. The respondent is also directed to pay interest as prescribed under RERA to the complainants for the delayed period of possession from the date of commencement of RERA i.e. 1-1-2017 till the actual date of possession.

d. To decide the claim of compensation sought by the complainants under section 12 /18 of the RERA, the present complaint be referred to Ld. Adjudicating Officer/MahaRERA to take appropriate decision under section 71 and 72 of the RERA.

22. With these directions, the present complaint stands disposed of.

23. The certified copy of the order will be digitally signed by the concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.

(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA