

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

Complaint No. CC0060000000100411

Mr. Rappai Vadassery

..... Complainant

Versus

M/s. Agil Real Estate Pvt Ltd

..... Respondent

Project Registration No. **P51700000640**

Coram: Hon'ble Dr. Vijay Satbir Singh, Member – 1/MahaRERA

The complainant appeared in person.

Adv. Jayashree Ramchandran a/w Adv. Sandeep Patil
appeared for the respondent.

ORDER

(3rd December, 2019)

1. The complainant has filed this complaint seeking directions to the respondent to handover the possession of the flat immediately and to pay interest for the extra amount recovered by the respondent before registration of the agreement for sale in respect of booking of a flat in the respondent's project known as "**Sunrise-D**" bearing MahaRERA registration No. **P51700000640** at Thane (West).
2. This complaint was heard on several occasions and the same was heard finally on 15-11-2019, when the complainant and the respondent appeared in person and through their advocate and made their respective submissions on record of MahaRERA.
3. It is the case of the complainant that he has booked the said flat in the respondent's project in the year 2013 for a total consideration amount of Rs. 1,54,11,950/-. The allotment letter was issued on 30-12-2013. Thereafter, the



agreement for sale was registered on 17-10-2017, wherein the date of possession is mentioned as 30-06-2020. At the time of booking, the respondent has agreed to handover possession of the said flat on 31-12-2017.

4. The complainant further stated that though he has booked the said flat in the year 2013, the agreement for sale was executed only on 17-10-2017 and till then the respondent without registering the agreement for sale, has accepted more than 10% amount from him, which is prohibited under section-13 of the RERA. The complainant, therefore, prayed for interest from the respondent on additional amount recovered by the respondent. The complainant further stated that he has not been given a copy of the agreement to read and he was not liable to pay development charges and other taxes to the respondent; still the respondent is asking the same. At the time of booking, the respondent has informed that other charges would not be more than Rs. 5 lakhs. However, now the respondent is asking for Rs. 9 Lakhs towards other charges. The complainant, therefore, prayed for grant of reliefs as prayed for in this complaint.
5. The respondent resisted the claim of the complainant by raising various defenses in their reply filed on record. The respondent has contended that the project under reference is completed on site and occupancy certificate has also been obtained on 19/01/2019 and the possession of the flat has been offered to the complainant in February, 2019. The complainant is raising objections with regard to infrastructure and development charges levied by the respondent and therefore, he is not taking possession of the flat. The respondent has further stated that the said charges are duly mentioned in the agreement for sale and also the cost sheet signed by the complainant in July, 2017. Hence, the complainant after signing the said documents can not refuse to pay the same. Initially, they have demanded an amount of Rs. 13 Lakhs from the complainant,

which is now reduced to Rs. 9 Lakhs. Further, the respondent has shown willingness to waive off the interest for the delayed payment of Rs. 7 Lakhs and stated that the complainant should pay infrastructure charges and take possession of the flat. The respondent, therefore, prayed for dismissal of this complaint.

6. The MahaRERA has examined the submissions made by both the parties as well as record. In the present case, the complainant is seeking directions from MahaRERA to the respondent to give immediate possession of his flat as well as interest for the excess amount collected by the respondent before registration of the agreement for sale. The complainant has contended that the respondent has taken more than 10% amount before registration of agreement for sale as they were not entitled to accept the same as per the provision of the RERA.
7. In this regard, the MahaRERA is of the view that there is no provision under RERA to grant such relief in favour of the complainant. The complainant should have taken appropriate action against the respondent at the relevant time, since the booking was done in the year 2013, when the provision of MOFA were in force. Hence, now the claim of the complainant can't be considered as the agreement for sale executed on 17-10-2017 binding the rival parties.
8. With regard to the relief sought by the complainant for possession of the flat, the MahaRERA is of the view that the occupancy certificate has been obtained for the project and the possession was offered to the complainant in February, 2019 by the respondent. However, the possession was not taken due to the payment dispute that arose between the parties. The respondent in this case is willing to handover possession of the flat by waving off the delayed payment interest amount to Rs. 7 Lakhs and ready to give possession to the complainant

by paying infrastructure charges. The complainant as well as the respondent have agreed for the payment schedule and the cost sheet duly signed by the complainant. Therefore, the parties must adhere to the said payment sheet. If the respondent raises demand as per the agreement, then the complainant is liable to pay the same and for the same no direction is required from the MahaRERA.

9. In the light of these facts, the MahaRERA directs both the parties to settle the issue of payment amicably and possession of the flat to be given to the complainant immediately subject to payment of dues as per the cost sheet signed by the complainant.
10. With these directions, the complaint stands disposed of.



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

महा-रेरा