

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO. CC006000000044384

Haresh Jethmal Asher ... Complainant

Versus

Macrotech Developers Limited
MahaRERA Regn. No. P51900000567 ... Respondent

Coram: Shri. Gautam Chatterjee, Hon'ble Chairperson.

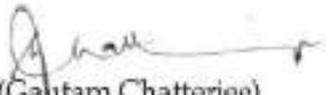
Complainant was initially represented by Adv. Kaustubh Patil (i/b. Pradeep Gandhi & Associates).

Respondent was represented by Adv. Abir Patel, (i/b. Wadia Ghandy & associates).

Order

February 28, 2020

1. In the present complaint, MahaRERA had passed an Interim Order dated September 12, 2018, against which an appeal was preferred by the Respondent before the Maharashtra Real Estate Appellate Tribunal. However, before the said Tribunal, the parties arrived at a mutual settlement and executed consent terms.
2. In view of the above, the complaint is hereby disposed of, as withdrawn, with liberty to approach MahaRERA again, if any of the term of the settlement terms are violated by the Respondent, in future.


(Gautam Chatterjee)
Chairperson, MahaRERA



THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI.

COMPLAINT NO: CC006000000044384.

Haresh Jethmal Asher

... Complainant.

Versus

M/s. Bellissimo Crown Buildmart

... Respondents.

Pvt. Lt.

(Evoq)

MahaRERA Regn: P51900000567.

Coram: Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Kaustubh Patil.

Respondents: Adv. Sunilraja Nadar.

INTERIM ORDER

12th September 2018.

Whether occupancy certificate issued under local law in the state of Maharashtra can be equated with completion certificate contemplated by The Real Estate (Regulation and Development) Act, 2016 and whether the part occupancy certificate will exempt the project covered under it from the jurisdiction of the real estate regulatory authority? are the important issues involved in this matter.

2. The complainant contends that he booked flat no.1301, 13th floor of the respondents' registered project 'Evoq', situated at New



Cuff Parade along with 3 car parking spaces. The respondents issued allotment letter on 22.05.2017 on the basis of booking form dated 08.04.2015. It is the grievance of the complainant that the respondents have advertised in newspaper that the possession of the flat would be given by December 2016 with all amenities. Thereafter, the respondents by addressing letter dated 30.08.2016 informed him that they shall hand over the possession by April, 2017. The respondents did not show/provide him the copy of occupation certificate and therefore, he could not get the loan and pay the entire consideration before application of GST in the State. Now he has to pay Rs. 40,00,000/- towards GST. He suffered loss and damage due to the incorrect statement of the respondents. Hence, he claims refund of his entire amount with interest.

3. The respondents have contended that they have received part occupation certificate on 08th June, 2017 from M.M.R.D.A. for 1 to 40 floors of B wing. Hence, it is not registered with MahaRERA. The complainant's booked flat is on 13th floor. Hence, this Authority has no jurisdiction to entertain this complaint.

4. I have heard the learned advocates of the parties. They have argued on the scope of Section 3 of The Real Estate (Regulation & Development) Act, 2016 (RERA) and rule 4 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estates Projects, Registration of Real Estates Agents, Rates of Interest and Disclosure on Website) Rules 2017. I am going to discuss these issues in detail in following paragraphs.

Scope of Section 3.



5. The learned Advocate of the complainant has brought to my notice Union of India through director of Income Tax Vs Tata Chemical Ltd. MANU/ SC/0213/ 2014 wherein Hon'ble Supreme court has referred to various cases decided by it explaining the principles of interpretation of statutes. It is held that the cardinal principle of interpretation of statutes is that the words of statute must be understood in their natural ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to the contrary. The golden rule is that the word of statute must prima facie be given their ordinary meaning. When the words of the statute are clear, plain and unambiguous then the courts are bound to give effect to that meaning irrespective of consequences. Therefore, I am going to follow these principles while construing the provisions of RERA to the fact of the case.

6. RERA has come into force with effect from 01.05.2017. Section 3 of RERA prevents the promoter from advertising, marketing, booking, selling or offering for sale or inviting persons to purchase in any manner any apartment or building, in any real estate project or part of it, in any planning area without registering the project with the real estate regulatory authority established under the Act. It provides that the projects which are ongoing on the date of commencement of the Act and for which completion certificate has not been issued, the promoter shall make the application within the period of three months from the date of commencement of the Act for registration. Subsection (2) of Section 3 provides,



'Notwithstanding anything contained in Sub-section (1), no registration of the real estate project shall be required-

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act.

7. The learned Advocate of the respondents submits that the respondents have received the part occupancy certificate within the period of three months i.e. on 08th June, 2017 and hence, respondents have not registered floor 1 to 40 of B wing with MahaRERA. MahaRERA therefore, does not get jurisdiction to entertain this complaint relating to the part of the building covered by it. He has relied upon Prasad Patkar Vs M/s. Runwal Project Pvt. Ltd. (Complaint no. CC006000000000182) decided on 17.11.2017 by this Authority.

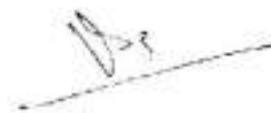
8. The learned advocate of the complainant submits that on 01.05.2017 when RERA commenced, admittedly the project was not registered though the occupancy certificate was not obtained prior to the commencement of the Act. Hence, he submits that the complaint is maintainable, for this purpose he relies upon Parag Mantri Vs Green Space Developers (CC005000000000136) decided on 05.02.2018 by this Authority.

9. After going through the provision of Section 3, it becomes clear that project requires registration when the promoter wants to sell apartment or building. Sub-section (1) thereof provides that the ongoing/incomplete project on the date of commencement of the Act and for which the completion certificate has not been issued are to be registered within three months from the commencement of the Act. Sub section (2) exempts the project from registration where the



promoter has received completion certificate for the project prior to the commencement of the Act. After considering this provision, I find the following picture emerges.

- a. Registration of the project is required before advertising marketing, selling etc. any part of the project.
- b. On the date of commencement of the Act, if any project is ongoing and its completion certificate is not obtained prior to the commencement of the Act, then such project needs registration.
- c. The ongoing projects required to be registered, were to be registered within three months from the commencement of the Act.
- d. The respondents received part occupancy certificate on 08th June, 2017. It indicates that on 01.05.2017 the project was ongoing but before the commencement of the Act the completion certificate was not obtained. Therefore, the project was required to be registered in the strict sense of law.
- e. Section 5(3) of the Act provides that the registration shall be valid for a period declared by the promoter for completion of the project or phase thereof.
- f. It is possible to contend that on 08.06.2017 when part occupancy certificate was issued, no useful purpose was going to be served by registering the project because it would have been a dead formality as the promoter was unable to furnish the information required by Section 4 of the Act.



g. However, the aforesaid view cannot be accepted because the Act is a beneficial legislation enacted for protecting the interest of consumers in the real estate sectors.

10. In Parag Mantri the Authority has taken the view that it can entertain the complaint in respect of unregistered project which required registration. In Prasad Patkar, the occupancy certificate was received and therefore, it was held that the project would not require registration.

11. The learned Advocate of complainant brings to my notice that MahaRERA has given undertaking before the Hon'ble High Court in Mohammed Zain Khan Vs Maharashtra Real Estate Regulatory Authority (WP (lodging)no. 908 of 2018) that it shall take cognizance of the complaints in respect of unregistered project also.

12. Now the next issue is, Section 3 (1) and (2)(b) refer to the 'completion certificate' whereas rule 4 refers to 'occupancy certificate' or 'completion certificate' for exempting the projects from registration. The question is, whether the State Government while exercising its power conferred by Section 84 can make the rules contrary to the statute? The learned Advocate of the complainant brings to my notice Subhash Chand Aggarwal Vs Union of India MANU/DE/2744/2011 decided by Delhi High Court wherein it has referred to Delhi Admm. Vs. Shri. Ram MANU/SC/0369/2000, Kunj Bihari Lal Butel Vs. State of H.P. MANU/SC/0111 /2000, state of Tamil Nadu Vs P. Krishnamurthy (2006) SCC 517. The Supreme Court has held that the mere conferment of rulemaking power by an Act does not mean that subordinate legislation will go beyond the scope of the enabling Act. The delegated power to legislate rules for



carrying out the purposes of the Act cannot be exercised as to bring into existence right or obligation or disabilities not contemplated by the provisions of the Act. After going through this judgement I find that the rules cannot be framed contrary to the provisions of main statute. Section 2 (q) defines completion certificate-

'Completion certificate' means the completion certificate, or such other certificate, by whatever name called, issued by the competent Authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent Authority under the local laws'.

Section 2 (zf) defines occupancy certificate-

'Occupancy certificate' means the occupancy certificate, or such other certificate by whatever name called issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity.

13. On plain reading of these definitions it becomes clear that when the project is developed completely according to the sanctioned plan, layout plan and specification approved by the competent authority, it issues completion certificate. The occupancy certificate can be issued to the project having the provision for basic civic infrastructure such as water, sanitation and electricity. Therefore, RERA contemplates that occupancy certificate is given only on the satisfaction of the fact of availability of civic infrastructure.

14. On this back drop now it is necessary to refer to Section 353A of the Mumbai Municipal Corporation Act 1888. It reads, -



353A- Completion Certificate: permission to occupy or use-

(1) Every person who employs a licensed surveyor or person approved by the Commissioner to erect a building or to execute any such work as is described in Section 342 shall, within one month after the completion of the erection of such building or the execution of such work, deliver or send or cause to be delivered or sent to the Commissioner at his office, notice in writing of such completion, accompanied by a certificate in the form of Schedule T signed by the person employed under section 344A, who is hereby required immediately upon completion of the work and upon demand by the person employing him to sign and give such certificate to such person, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work:

- (a) Such inspection shall be commenced within seven days from the date of receipt of the notice of completion, and
- (b) The commissioner may within seven days from date of commencement of such inspection, by written intimation addressed to the person from whom the notice of completion was received, and delivered at his address as stated in such notice, or, in the absence of such address, affixed to a conspicuous part of the building to which such notice relates-

The Act further defines completion certificate, occupancy certificate and part occupancy certificate as under:

A handwritten signature in black ink, appearing to be 'M. S.', written over a horizontal dashed line.

Acceptance of Completion certificate-

15. The owner through his licensed plumber, shall furnish a drainage completion certificate to the Commissioner in the form in Appendix XIX. The owner through his licensed surveyor/ engineer/ structural engineer/ supervisor or his architect who has supervised the construction, shall furnish a building completion certificate to the Commissioner in the form in Appendix XX. This certificate shall be accompanied by three sets of plans of the completed development. The Commissioner shall inspect the work and after satisfying himself that there is no deviation from the approved plans, issue a certificate of acceptance of the completion of the work in form in Appendix XXI

Occupancy Certificate: -

16. On receipt of the acceptance of completion certificate in the form in Appendix XXI the owner, through his licensed surveyor/ engineer/ structural engineer/ supervisor or his architect shall submit to the Commissioner a development completion certificate in the form in Appendix XVIII with three copies of the completion plan, one of which shall be cloth mounted for record, the Commissioner may inspect the work and after satisfying himself that there is no deviation from the sanctioned plan, issue an occupancy certificate in the form in Appendix XXII or refuse to sanction an occupancy certificate within 21 days from the date of receipt of the said completion certificate, failing which the work shall be deemed to have been approved for occupation, provided the construction conforms to the sanctioned plans. One set of plan, certified by the Commissioner as the completed plans shall be returned to the owner along with occupancy certificate. Where the occupancy certificate is refused or



rejected the reasons for refusal or rejection shall be given in intimation of the rejection or refusal.

Part Occupancy Certificate:

17. When requested by the holder of the development permission, the Commissioner may issue a part occupancy certificate for a building or part thereof, before completion of the entire work as per development permission, provided sufficient precautionary measures are taken by the holder to ensure public safety and health. The occupancy certificate shall be subject to the owner's indemnifying the Commissioner in the form in Appendix XXIII.

18. Development control regulation 2010 for Wadala Truck Terminal where the respondents project is situated provides the provisions of completion certificate and occupancy certificate as under:-

Completion Certificate -The owner through his architect, licensed surveyor, engineer, structural engineer, as the case may be, who has supervised the construction, shall give notice to the M.C. MMRDA regarding completion of work described in the building permission in the form in Appendix H along with four sets of the completion plan. One of the sets, duly certified as the completion plan, shall be returned to the owner along with the issue of full occupancy certificate.

Occupancy Certificate: -

The M.C., MMRDA on receipt of the completion certificate, shall inspect the work and sanction or refuse an occupancy certificate, in the proforma in Appendix I within Twenty-One days from the date of receipt of completion certificate, after which period it shall be



deemed to have been approved by the MC, MMRDA for occupation provided the building has been constructed as per the sanctioned plans. Where the occupancy certificate is refused, the various reasons for rejection shall be quoted, at the first instance itself.

Part Occupancy Certificate:

When requested by the holder of the building permission, the MC, MMRDA may issue a part occupancy certificate for a building or part thereof, before completion of the entire work as per development permission, provided sufficient precautionary measures are taken by the holder of the building permission to ensure public safety and health.

19. After going through these provisions it becomes clear that in the State of Maharashtra the completion and occupancy certificates are issued under the provisions of Mumbai Municipal Corporation Act 1888 and the DC Rules. These provisions do show that the holder of the development permission has to submit the completion certificate of the architect/engineer under whose supervision the construction is made to the local authority. On acceptance of such completion certificate the local authority verifies that the construction is completed in accordance with the building permissions and the rules and thereafter they issue the occupancy certificate. The provisions of RERA indicate that the occupancy certificate can be issued prior to the issuance of completion certificate. However, in the State of Maharashtra the completion certificate is issued by the private architect or engineer engaged for supervising the construction and thereafter the local authorities issue the occupancy certificate on its satisfaction that the construction is completed in accordance with law



as per the sanctioned plan. In view of this, I hold that Rule 4 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estates Projects, Registration of Real Estates Agents, Rates of Interest and Disclosure on Website) Rules 2017 is not contrary to the provisions of Section 3 of RERA. On the contrary the occupancy certificate issued under the local Municipal Laws come within the definition of completion certificate defined by RERA.

20. The part occupancy certificate impliedly demonstrates that the building/project is not completed. It is issued on the basis of part completion certificate given by the private architect that too on the indemnity of the owner/constructor. Hence, it indicates that the project is not completed as per the sanctioned building plan, layout plan and their specifications. Section 3 (2) of RERA exempts the phase/part of the project/building from its registration. However, I find that the other requirements of RERA can be complied with only on completion of the entire project such as handing over the amenities to the society of the allottees, execution of their conveyance in favour of the society etc. Many a times the other amenities and services promised may be provided on the completion of the last phase of the project. Therefore, the interest of allottees of the entire project is involved in the completion of the whole project in its entirety. It would be anomalous to hold that some part of the building is covered by RERA's jurisdiction and other part is exempted. Hence, in my opinion, the entire project comes under the jurisdiction of RERA so long as its occupancy certificate is not issued by the Competent Authority. This leads me to hold that though the respondents have received the part O.C. including that of 13 floor



where the complainant's booked flat is situated, the jurisdiction of the Real Estate Regulatory Authority is not lost. Hence the order.

ORDER

Respondents' application for dismissing the complaint is rejected.


12-9-18

Mumbai.

Date: 12.09.2018.

(B. D. Kapadnis)

Member & Adjudicating Officer,

MahaRERA, Mumbai.