

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

Appeal No. AT00600000041928 of 2019

In

Complaint No. CC006000000057390

Shri. Manohar Dattatraya Kamble

Address :

Varchi Khopoli, Tal. Khalapur

District. Raigad, Pin Code-410 203

Duplex No. 3, 14th Floor,
Osho Kabir CHS, Plot. No.42,
Sec. 10, Khanda Colony,
New Panvel

... Appellant

Versus

1. DATTAKRUPA BUILDER AND DEVELOPERS

Through their PARTNERS

A. SHRI. KISHOR GANPAT KAMAT

Duplex No.3, 14th Floor,
Osho Kabir CHS, Plot No. 42,
Sec. 10, Khanda Colony,
New Panvel

B. SHRI. KETAN PRAVIN KHANDAGLE

Poyanje,
Taluka. Panvel, District Raigad

C. SHRI. GANESH VITTHAL GAIKWAD

Subashnagar, Khopoli,
Taluka. Khalapur, District Raigad,
Pin – 410 203

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2. SUDARSHAN DEVELOPERS

Proprietor

SHRI. SAMEER DATTATRAYA MASURKAR

Sudarshan Bunglow, Varchi Khopoli,

Taluka Khalapur, District Raigad

Pin – 410 203

... Respondents

Adv. Mr. Saurabh Godbole for Appellant

None for Respondents

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 2nd November, 2023

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER : SHRIRAM R. JAGTAP, MEMBER (J)]

This Appeal emanates from Order dated 18th October, 2019 passed by Member I, MahaRERA (for short the Authority) in Complaint No. CC006000000057390 filed by Appellant whereby learned Authority declined to grant reliefs as sought in the Complaint by Appellant.

2] Appellant is a Complainant. Respondent No.1 is a partnership firm. The Respondent Nos. 1A to 1C are partners of Respondent No.1. Respondent No.2 is a proprietorship firm. Shri. Sameer Dattatraya Masurkar is the proprietor of Respondent No.2. The Respondent No.1 is a Developer and Respondent No.2 is



erstwhile Developer. Parties to the Appeal will hereinafter be referred to as "Complainant", "Developer" and "erstwhile Developer" respectively for the sake of convenience.

3] Facts gathered from record broadly reveal that Respondent No.2, erstwhile Developer, had taken land Survey No. 24, Hissa No. 3A, CTS No. 934 situated at Village Chinchawli Shekin, Taluka Khalapur, District Raigad from the land owners namely Shrimati Manisha Manohar Nikam, Shrimati Sujata Maruti Kadam, Shrimati Sudeshna Avinash Bhaund, Shrimati Prachi Manohar Nikam, Shrimati Mayan Manohar Nikam, Shrimati Nikita Manohar Nikam and Mrs. Asmita Manohar Kamble under the registered Development Agreement dated 12.06.2014. Later on, the Respondent No.2 conveyed or transferred the development rights of the said land to Respondent No.1 by executing the registered Supplementary Development Agreement dated 04.10.2017. On the same date i.e. 04.10.2017 Respondents have jointly executed the Memorandum of Understanding (MoU) wherein the Respondents have agreed to give flat admeasuring 2100 sq. ft. in the building "Shree Datta Niwas" constructed on the said land to the Complainant as a remuneration against the services rendered by the Complainant to Respondents while



developing the said land. The Complainant has borne expenses while rendering services to the Respondents. Pursuant to the MoU dated 04.10.2017 the Complainant was incessantly pursuing the Respondents for execution of the Sale Deed with respect to the flat, however the Respondents have very conveniently avoided to execute the sale deed in favour of Complainant. Being dissatisfied with the conduct of the Respondents, the Complainant has filed Complaint seeking directions from MahaRERA to the Respondents to execute the registered Sale Deed in his favour with respect to flat admeasuring 2100 sq. ft. in the building "Shree Datta Niwas" and further direct the Respondents to handover possession of the said flat to Complainant.

4] The Respondents have appeared in the Complaint however, only the Respondent No.1 has resisted the Complaint. The defense of the Respondent No.1 which emerged from the impugned Order is that Complainant has no locus standi to file Complaint, since he is neither owner nor promoter/ allottee in the said project. Besides the Complainant is not aggrieved party in this project and just to harass the Respondent No.1 he has filed the Complaint. The alleged MoU referred by the Complainant does not bear the signature of Respondent No.1 and the same is signed by



Respondent No.2. The Complainant has not produced receipt to strengthen his contention that he has paid Rs.50,00,000/-to Respondent No.1. The Complainant has not produced allotment letter. With these contentions the Respondent No.1 has prayed for dismissal of Appeal.

5] The Respondent No.2 put its appearance through Advocate and supported the claim of Complainant admitting payment of Rs.50,00,000/- by Complainant.

6] After hearing the parties the learned Authority dismissed the Complaint by holding that as there is no allotment letter the Complainant is not an allottee, and Complainant wants to enforce his rights through MoU dated 04.10.2017 which is a contract between the parties and MahaRERA has no jurisdiction to decide the controversy between the parties as the matter in issue falls within the jurisdiction of Civil Court.

7] Record reveals that despite service of summons the Respondent Nos. 1A to 1C and Respondent No.2 did not appear therefore Appeal has been proceeded ex-parte against these Respondents. It further reveals that Advocate Mr. Sachin Hande has appeared on behalf of Respondent No.1 and sought time to file reply. However, despite ample opportunity the Respondent No.1



did not file reply therefore Appeal came to be proceeded without reply of Respondent No.1.

8] We have heard learned Advocate Mr. Saurabh Godbole for Appellant. The arguments of learned counsel appearing for Appellant is nothing but reiteration of the contents of Appeal memo.

9] After considering the submissions advanced by learned Advocate Mr. Saurabh Godbole for Appellant, material on record and impugned Order only point that arises for our consideration is whether the impugned Order is sustainable in law? To which our finding is in the negative for the reasons to follow.

REASONS

10] Examination of material produced on record would show that the Respondent No.2 had taken subject land for development from the land owners. Later on, he conveyed and transferred the development rights of the subject land to Respondent No.1 by executing the Supplementary Development Agreement dated 04.10.2017. On the same date the Respondents have jointly executed the MoU, whereby the Respondents have agreed to give flat admeasuring 2100 sq. ft. in building "Shree Datta Niwas" constructed on the said land to the Complainant as a remuneration



against the services rendered by Complainant to Respondents while developing the said land. According to Complainant he had spent Rs.50,00,000/- while rendering services to Respondents for development of the said land and pursuant thereto the MoU came to be executed by Respondents in his favour. Since the Respondents have avoided to execute the Sale Deed/ Agreement for Sale (AFS) with respect to flat in the building "Shree Datta Niwas" the Complainant being aggrieved person filed Complaint in MahaRERA and sought directions to Respondents to execute Sale Deed/ AFS in his favour.

11] On consideration of broad factual account of events as above, it appears that considering the averments made in the Complaint and reliefs sought therein, learned Authority had a doddle task at hand to consider the contents of MoU dated 04.10.2017 in the light of definition of "allottee" and decide the entitlement of Complainant to get execution of AFS/ Sale Deed in the light of provisions primarily under Section 13 of RERA, 2016. However, it reveals from the Order that the learned Authority has failed to consider the MoU dated 04.10.2017 in the light of definition of "allottee" and arrived at a wrong conclusion that no allotment letter or payment receipt are submitted by the



Complainant on record which are primary stage of booking of a flat and thereby dismissed the Complainant holding that Complainant is not a allottee.

12] Section 2(d) of RERA Act, 2016 defines "allottee"

*" 2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or **otherwise** transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"*

13] By virtue of MoU dated 04.10.2017 new Developer had allotted flat admeasuring 2100 sq. ft. to Complainant in the building "Shree Datta Niwas" as a remuneration against the services rendered by Complainant to Respondents for development of the said land. It means Respondents have allotted or **otherwise transferred** the flat in the building "Shree Datta Niwas" to Complainant by virtue of MoU dated 04.10.2017. The word "**otherwise**" occurred in definition of "allottee" denotes transfer of flat in any manner to allottee by promoter or creation of right in respect of flat in any manner in favour of a person by promoter who can be termed as an allottee. In the instant case as indicated by virtue of the MoU dated 04.10.2017, the Respondents have allotted flat admeasuring 2100 sq. ft. to Complainant. Therefore,

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we are of the view that the Complainant is an allottee within the ambit of definition of "allottee".

14] A careful examination of impugned Order would show that the defense of Respondent No.1 which emerged from the impugned Order is that the Complainant is neither owner nor promoter/ allottee in the said project therefore he is not an aggrieved person within the meaning of Section 31 of RERA Act, 2016 and the Complaint has been filed just to harass the Respondent No.1. However, we have already observed that the Complainant is an Allottee within the meaning of definition of "allottee" as he has acquired certain rights by virtue of MoU dated 04.10.2017 in the subject project. According to Respondent No.1 the partners of Respondent No.1 have not signed MoU. The Respondents have produced on record the copy of MoU which, on examination, clearly indicates the signatures of both the Respondents.

15] It is specific contention of Complainant that he has spent Rs.50,00,000/- while rendering services to Respondents for development of the subject land. This fact is not disputed by Respondent No.2. It means the MoU dated 04.10.2017 is not hit by Section 25 of Contract Act, 1872. Allotment of subject flat in



the project "Shree Datta Niwas" by Respondents in lieu of services rendered by the Complainant for development of subject land, is a good consideration for Contract. Thus, it is not hit by Section 25 of the Contract Act, 1872. Section 13 of RERA Act, 2016 relates to no deposit or advance to be taken by Promoter without first entering into an AFS. Section 13 casts an obligation on the Respondents to execute the AFS in the event of payment of 10% of the costs of apartment. In the instant case as indicated above the Complainant has spent Rs.50,00,000/- while rendering services to Respondents for development of subject land. Under the circumstance it was expected of Respondents to execute the AFS. However, the Respondents have failed to execute the AFS.

16] A perusal of Complaint would show that the Appellant has sought directions for possession of flat however, there is no material on record to show that the Respondents have completed the project and obtained Occupancy Certificate. Under the circumstance at this stage, it is not desirable to direct the Respondents to handover possession of the flat to Complainant. Therefore, we are of the view that the Appellant is not entitled to the said relief. However, Appellant is at liberty to seek relief of

Spectator

possession at appropriate stage of the project i.e. on completion of the project.

17] In view of the foregoing discussions we are of the view that the impugned Order is not sustainable in law and warrants interference in the instant Appeal. Accordingly impugned Order is set aside. Consequently, we proceed to pass the following Order.

ORDER

1. Appeal No. AT006000000041928 of 2019 is partly allowed.
2. The impugned Order dated 18.10.2019 passed in Complaint No.CC006000000057390 is set aside.
3. Respondents are directed to execute the registered Sale Deed/ Agreement for Sale (AFS) with respect to flat admeasuring 2100 sq. ft. in the building "Shree Datta Niwas" in favour of Complainant within 60 days from today.
4. No Order as to costs.
5. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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