

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO: CC006000000194835

Ayyaz Khan and Saba Khan

...Complainant/s

Vs

Era Realtors Pvt Ltd and Ors

...Respondent/s

MahaRERA Project Registration No. P51800010463

Order

January 14, 2022

(Date of hearing - 11.08.2021, matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Harshad Bhadbhade a/w Adv. Anwar Landge for the Complainant
Advocate Namrata Powalkar for the Respondent

1. The Complainant is a home buyer and Allotee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondent have registered his project "Alta Monte and Signet" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") bearing MAHARERA Registration No. P51800010463 (hereinafter referred to as the "said Project").
2. The Complainant seeks relief as under:
 - a) *That the Respondent be directed to pay the interest at the rate 10.75% on Rs.1,86,52,627/- from the agreed date of possession i.e. 31/03/2017 till handing over of possession.*

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b) That the Respondents be directed to compensate the Applicant for the mental agony and mental trauma to the tune of Rs. 10,00,000/-

c) That the Respondent be directed to pay monthly rent of Rs. 50,000/- per month to the Applicant since April 2017 by way of compensation.

3. On 11.08.2021, the following roznama was passed by this Authority:

"Both Parties are present.

Complainant states that he entered into agreement for sale on 10.11.2014 for a flat admeasuring 1059 sq. ft or thereabouts and as per clause 13 of the agreement the possession date was 31.03.2017. Also, he has paid over Rs. 1.86 Cr against the total consideration of Rs. 2.54Cr. The RERA date was earlier 2021. and further extended to 31.06.2022. Complainant states that no consent has been taken for extension and hence he desires interest till the date of possession together with compensation. Further he states that the arbitration clause mentioned in clause 13 of the agreement, does not hold as RERA act is specific act and clearly defining the relief available. Respondent first takes preliminary objection on maintainability. Attention is drawn to the order of RERA which has cleared this matter in an earlier case. Second preliminary objection of the Respondent is to clause no. 13 in which, while defining possession date it also provides for arbitration proceeding in case of a dispute. The Respondent thus seeks that matter be referred for arbitration with these two preliminary objections of the Respondent. Hence, proceeds to argue the matter on merits. The Respondent states that the delay has taken place due to its Slum Rehabilitation Project in which they were agitations from Slum dwellers, delay for regularity clearances and these being no environmental committee in the state and that they had to approach Central Govt for all environmental clearance, due to this the development was delayed. Further, the Respondent states that all these delays fall into the condition as mentioned in agreement namely they all being beyond the control of the developer. The Parties are at liberty to upload written submission by 18.08.2021, subsequent to which matter will be reserved for order."

4. The submissions of the Complainant are as follows:

a. Vide an agreement dated 20.11.2014, Complainants purchased an apartment bearing no. 610, in Wing B (hereinafter referred to as "**said agreement**" and "**said apartment**") of the said Project for a total consideration of Rs. 2,54,75,250/-.

- b. That out of the total consideration agreed in the said agreement, a sum of Rs.1,86,52,627/- is paid by the Complainant, which is approximate 73% of the amount.
 - c. An agreement was entered into between the Parties on 20.11.2014 whereby the date of possession was mentioned as 31.03.2017.
 - d. The Respondent has till date not provided the possession of the said apartment to the Complainant because of which the Complainant is suffering from huge financial loss.
5. The Respondent has filed an affidavit dated 06.08.2021 and wherein the averments with regard to the reasons for delay in possession has been enumerated by the Respondents and the same are taken on record.
6. From the submissions of the Complainant and the Respondent the preliminary issue framed for consideration is *Whether the Arbitration and Conciliation Act, 1996 ("Arbitration Act") or Real Estate (Regulation and Development) Act, 2016 ("RER Act") will prevail in the present case?*
7. Thus, in the present complaint, the following observations are noteworthy:
 - a. The agreement was entered into whereby the date of possession as submitted by the Complainant was 31.03.2017 (excludes 6 months of grace period). This date is not disputed by the Respondent in the reply filed by them.
 - b. The Complainant has paid an amount of Rs.1,86,52,627/- of the total consideration amount till date towards the purchase cost of the said apartment and the same is not disputed nor denied by the Respondent in the reply filed by them. (Respondent has mentioned in his reply that Complainant has paid Rs.1,92,89,508/-)

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- c. Further, the Respondent has delayed in handing over possession of the said apartment as per the committed date i.e. 31.03.2017 (excludes 6 months gross period) as submitted by the Complainant thereby violating the provisions of section 18 of the said Act.
- d. At the time of hearing Respondent has raised preliminary objection of the Respondent to clause No. 13 of the registered agreement for sale in which it is mentioned that, while defining possession date it also provides for arbitration proceeding in case of dispute. The Respondent thus seeks that matter be referred for arbitration. Also, the Respondent states that delay has taken place due to its Slum Rehabilitation Project in which there were agitations from Slum dwellers, delay in regulatory approvals and these being no environmental committee in the state, they had to approach Central Govt for all environmental clearance, due to these reasons the development was delayed.
- e. In the first stage, the question of whether the Arbitration Act or the RERA Act would be applicable in the instant case. The RER Act was enacted and enforced with the aim and objective of regulation and promotion of the real estate sector and ensuring sale of plots, apartments or buildings as the case may be, in an efficient, fair and transparent manner, for protection of the interests of the consumer. The RER Act establishes an adjudication mechanism for speedy dispute redressal in the real estate sector. It is also clear that a dispute between a real estate promoter and an allottee is specific in nature and the adjudicating mechanism established under the Act is exclusively for adjudicating such dispute between real estate consumers and promoters, whereas the Arbitration Act is general in nature regarding any dispute between two Parties to a contract.
- f. While this Authority is aware that it is a cardinal principle of law that a specific law regarding any subject matter has an overriding effect over

any general law at the same time this Authority does not have the mandate to rewrite the agreement clauses in the agreement for sale which was executed before RERA. Since the agreement is signed on 20.11.2014 i.e before commencement of RERA, the clauses incorporated therein cannot be now be rewritten. The law in existence then namely the Arbitration Act was mentioned in the agreement in order to resolve disputes. This Act also happens to be in existence today. The date of completion as per this is 31.03.2017 (excludes 6 months grace period). The dates of completion of RERA website are 30.12.2021 and then extended to 30.12.2024. Since the agreement for Sale is entered into before the coming into force of RERA the relevant date for completion in this case would be the date mentioned in the agreement for sale. It is also pertinent to note that the completion date is qualified with an arbitration clause in case of a dispute, the said Act also does not envisage that the agreement for sale which has been executed prior to the commencement of the Act can be re - written or modified. The Act does not provide for rewriting of contracts and agreements entered into before the commencement of the Act. Hence, the date of completion mentioned in this agreement and other terms and conditions mentioned in the agreement remains sacrosanct.

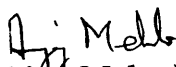
g. Thus, it is observed that this agreement is executed before RERA. Hence, both Parties at that point of time in the absence of RERA have put in place certain clauses and caveats/covenants to safeguard their interests. In view of the uncertainties because the said project is a Slum Rehabilitation Project the clause of arbitration has been put in to qualify disputes with respect to the date of possession. In the absence of a specific law the Parties strive to use the general law to account for any exigencies that may arise. At the time of execution of this sale deed no specific law was in existence. The RERA came into effect at a later date. Hence the Parties to the best of their knowledge have put in place

a mechanism in the form of an arbitration clause to deal with any disputes that may arise due to non-adherence to the completion date as stated. This mechanism of arbitration which was available in law then and is also recognised in law today cannot be overwritten just because a specific law is now available. To say that at the time of execution of the sale deed on 20.11.2014 the Parties should have had the foresight that a specific law was going to be enacted in 2016 and hence not indemnify themselves with the then available law is simply preposterous.

- h. The Parties will have to now abide by the terms of the Agreement for Sale dated 20.11.2014. The Parties cannot now take recourse to RERA for a disputed issue for which the available recourse was defined in the agreement then itself. Thus, the answer to issue in para 6 would be that the Parties are bound by the agreement for sale and the said agreement has the Arbitration clause which would apply in this case as the same has been executed before the advent of RERA.

FINAL ORDER

In view of the above observations, the complaint stands disposed of and the Parties can file necessary proceedings under the Arbitration Act. No order to cost.


(Ajoy Mehta)
Chairperson, MahaRERA