

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI.

Appeal No.AT006000000010525

M/s Rising City Ghatkopar Association
C/o Mr. Swaminathan, 21, Raju Mansion,
V.B. Lane , Ghatkopar,
Mumbai-400 075. ... Appellant

Versus

M/s Rare Townships Pvt.Ltd.
194-B, Ghatkopar-Mankhurd Road,
Opp: Chheda Nagar, Chembur,
Mumbai-400 089. ... Respondent

Shri Sanjay Chaturvedi, Advocate for Appellant
Shri Nimay Dave a/w Ms. Sana Khan i/b Dhaval Vussonji &
Associates, Advocates for Respondent.

**CORAM: INDIRA JAIN, J, CHAIRPERSON &
S.S. SANDHU, MEMBER (A)
DATE : 23rd APRIL, 2019**

JUDGMENT (PER S.S. SANDHU, MEMBER (A))

This appeal arises from the order dated 10th July, 2018
passed by Learned Chairperson MahaRERA (for short 'the
Authority') in Complaint No. CC006000000023888.



2. For the sake of convenience, we would refer the parties in their original status as Complainant and Respondent as referred before the Authority.

3. The Short facts for the purpose of this matter are stated as under:

The Complainant, M/s Rising City Ghatkopar Association is an association of allottees of Rising City project of Respondent Rare Township Private Ltd. (RTPL) at Ghatkopar (East), Taluka Kurla, Mumbai. It has been formed with the objectives to *Inter alia* protect the legitimate rights, privileges and interests of its members who are allottees of various projects being developed on a larger layout by the Respondent. These projects are registered with MahaRERA with different registration numbers to be executed in a phased manner. The Complainant consists of diverse types of allottees. Some of the allottees have booked their flats en-masse in the year 2010-11 and others booked individually from the year 2011 onwards with possession promised in various years upto 2018. Some of the allottees have already executed and registered the sale agreements whereas others have refused to execute until the Respondent modifies such agreements in accordance with RERA provisions.



4. On account of various grievances/grounds against the Respondent, the Complainant filed a complaint in April 2018 seeking thereby various reliefs by way of directions to the Respondent by the Authority.

1. Nature of grounds raised in the Complaint

- i) Some allottees booked flats en-masse by paying Rs. 20-30 lakhs in the year 2011 with possession promised in 36 months whereas others who booked flats from 2011 onwards are promised possession in the years of 2015, 2016, 2017 and 2018. Many of these allottees refused to enter into one sided agreements favouring the Respondent and insisted for modified agreement as mutually agreed which is not provided.
- ii) Allottees who booked flats under Subvention scheme have paid amount much more than due as per progress of the project.
- iii) Respondent did not deliver flats till date and has registered the project with MahaRERA as several split projects with revised delivery date of possession in 2023. Some amenities including car parks are planned to be delivered in 2040.



- iv) Respondent wants to charge substantial cancellation fee from those who want to cancel bookings and reimburse their money only when it finds new buyers for cancelled flats.
- v) Draft agreement sent by Respondent is draconian in its content, incomprehensible without spending on legal advice and laden with several inadequacies.

2. Reliefs sought from the Authority as directions to Respondent

- i) to come clean on all aspects of the project clearances/permissions including aviation, environmental, construction, commencement, contractual obligation to deliver PWD certain flats etc. and to prove Respondent's financial health and capacity to complete the project in time.
- ii) to allow cancellation of flat bookings without any cancellation fee and to pay interest and exemplary compensation for delay to such allottees.
- iii) to modify the draft agreement for sale in line with model agreement.



- iv) to pay interest and exemplary compensation for delay to the allottees who do not want to cancel their bookings and adjust the same towards cost of flats payable by the allottees to Respondent.
- v) to pay interest and exemplary compensation to those allottees under subvention scheme who have paid amount much more than due as per progress of project and now bearing burden of interest payment while still staying in rented accommodation by paying rent.
- vi) to not seek further payments from those allottees whose flats are above 11th floor as Respondent does not have permission to construct above 11th floor.

5. After hearing the parties, the Authority passed the impugned order dated 10th July 2018 observing and directing thereby as under:

“3. On the next date of hearing, the Complainant submitted that though the parties discussed the various clauses of the draft agreement, all the differences could not be resolved. They requested that the Respondent should be directed that they strictly adhere to the model form of agreement in letter and spirit. The Complainant also requested that the Respondent be



directed to disclose the agreement they have entered into with the Public Works Department (PWD), which is the landowner. The counsel for the Respondent stated that the land status details have been already disclosed in the legal title report uploaded in the registration webpage.

4. In view of the above, the parties are directed to execute and register the agreement for sale as per the provisions of the Section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this order. Further, the Respondent shall upload the copy of the agreement with the landowner, in their registration webpage within 7 days from the date of this order. The Respondent shall also upload the project completion schedule under the "Others" tab in the registration webpage within 30 days of this order.

5. Consequently, the matter is hereby disposed off."

6. Being dissatisfied, this appeal has been filed on the following prominent grounds as culled out from Para 6 of the appeal seeking same and identical reliefs as sought in complaint.



- i) Revised agreement for sale sent on 30th July 2018 by the Respondent in pursuance of directions in the impugned order is not as per model agreement and contains certain clauses that are in violation of provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules/Regulations thereunder. Some major concerns in respect of the aforesaid agreement and the clauses therein for objecting to its acceptability by Complainant are enumerated as under:
- a) Agreement is not in the format as recommended by MahaRERA. It is not simple and easy to understand for allottees and contains unnecessary and superfluous clauses not applicable/agreeable to all allottees such as giving possession for fit outs before receiving the Occupation Certificate etc.
- b) Even after warning during the discussions in the hearing by the Authority, Respondent has not refrained from including the clause relating to licensing of the parking spaces.
- c) Against the provisions of the RERA the agreement envisages providing multiple informed consent without



allottees knowing precisely as to what changes they have consented to.

- d) The clauses of force majeure are not separately brought out as in the model agreement and it contains conditions that are not included in provisions of the RERA.
- e) Agreement envisages allottees to be not entitled to any interest and compensation in case the Respondent abandons the project.
- f) Possession date is December 2020. But amenities will be provided much later in 2023 and not at the time of the possession. Possession date is also much beyond the date given in the allotment letter.
- g) Agreement envisages giving part possession while providing that construction would continue at higher levels.
- ii) The promoter has not uploaded complete set of agreement, MOU, resolution, decision etc. relating to land owner (PWD). The uploaded document is partial and does not provide any information.
- iii) The project completion schedule uploaded by the Respondent does not provide milestones to assess the progress of execution as per given schedule.



- iv) Though date of providing amenities is given, the sequence and plan of construction and commissioning of various amenities is not made available.
- v) The Authority has not directed the Respondent to i) come clean on various necessary project clearances/permissions including aviation, environmental etc. and ii) prove his financial health and capacity to complete this huge project in time as it has neither sufficient capital nor the experience to execute such projects.
- vi) The Respondent is duping the allottees by describing the project at MahaRERA Website in a manner which is different from the description provided at the time of payment by allottees.

7. Heard the learned Counsel for the parties at length.

8. Pursuant to arguments advanced on 14th March, 2019, the learned Counsel for Complainant submitted his detailed written submissions on 2nd April, 2019 reiterating his challenge to the order and prayed for grant of identical reliefs he sought from the Authority as enumerated at Para-4(2) of this order. The crux of his submissions is summarised as under.



i) The learned Counsel for Complainant drew our attention to the contents of Para 4 of the impugned order, the grounds and reliefs sought in the complaint placed at Exhibit 'C' to this appeal. He submitted that Complainant has filed this appeal being aggrieved by the fact that even though the Complainant sought various reliefs as mentioned in his complaint the Authority ignored them and has neither recorded nor considered all respective pleadings in the impugned order.

ii) Complainant further submitted that from amongst various reliefs claimed by him, the Authority has addressed only one relating to execution and registration of the agreement as per provisions of the RERA. However, the Authority ignored to address other reliefs sought by Complainant allottees under Sections 12 and 18 of the RERA, on account of delay in completion of project that was admitted during detailed discussions in the proceedings before the Authority.

iii) The Complainant also submitted that the revised agreement provided by the respondent in compliance of the impugned order is not RERA compliant. He referred to contents as enumerated in the grounds of appeal. He also specifically highlighted that several clauses such as Recital 'U', Recital 'Y',



18.2, 30.1, 36.7 etc. of the agreement are unidirectional, one sided and provide undue advantage to the respondent and are contrary to the draft agreement prescribed by the Authority as per Rules and Regulations under the RERA.

iv) The learned Counsel also argued that no doubt 2/3rd allottees desire to stay back with the project in case there is proper agreement. But such and other allottees, apart from the relief of execution of agreement, had sought various other relevant reliefs also as per law. However, the Authority, did not address all those grievances/reliefs of such allottees, including particularly those allottees who after investing in the project waited for possession for 9 years and now wanted to come out of the project.

v) It was also argued that review of the impugned order on account of omission and overlooking certain reliefs in original complaint by the Authority was impermissible under Section 39 of the RERA as the said provisions contemplate rectification of only mistakes that are apparent on record and bar amending the substantive part of the order as per Second proviso of the said Section.



9. Per contra, the learned counsel of respondent challenged the appeal primarily on the following grounds:

- i) Even though Complainant sought various reliefs in the complaint alleging to be aggrieved by the acts/failures of the respondent, he did not urge or press all the said grounds and reliefs. The only issue that was pressed before the Authority was for execution of better agreement. In such circumstances, the Authority has granted relief for execution and registration of sale agreement, after recording and considering the grounds and reliefs, as urged by Complainant during the course of oral arguments. Accordingly the impugned order does not suffer from any illegality.
- ii) The respondent has already complied with the directions in the impugned order by providing the sale agreement and by uploading all necessary documents/information as directed. In view of this, Complainant cannot be said to be an aggrieved party in the eyes of law for entitling him to file the instant appeal.
- iii) There is no ground in the appeal that challenges the impugned order for the reasons of it suffering from any infirmity or otherwise. The grounds as raised in Para 6 of this Appeal in

fact only seek to contend that the revised agreement provided by respondent in compliance of the impugned order is not in accordance with the model agreement prescribed by the Authority as per provisions of the RERA. This means that the Complainant has accepted the impugned order and in such circumstances, in case of any alleged non-compliance of the order the Complainant should approach the authority for effective implementation thereof. The Complainant does not have any sufficient cause to file this appeal and in fact seeks to treat the Tribunal as an executing Court which is not permissible in law.

iv) The grounds/points as recorded in the impugned order are the only grounds that are deemed to have been urged before the Authority and remaining grounds have been abandoned as not pressed or urged. The Complainant could have taken recourse to Section 39 of the RERA for rectification of the mistakes if there was any alleged omission or ignoring of certain reliefs sought in the complaint by the Authority. Complainant has neither argued nor taken any steps to suggest that grounds now sought to be urged for the first time were earlier argued before the learned Authority. It would not be sufficient to state such grounds in the Memo of Appeal or in the written arguments to

make them admissible if they were not raised earlier before the lower court. Accordingly the learned counsel for respondent argued that the grounds (particularly grounds in Para 6.11 to 6.13 of the appeal) sought to be raised by Complainant for the first time in appeal cannot be allowed to be raised for adjudication at the appellate stage. In support of his contentions the Respondent relied upon the judgments by Hon'ble Supreme Court in case of **Gauri Shankar vs M/s Hindustan Trust (Pvt.) Ltd. & Ors [(1973) 2 SCC 127]** and by Hon'ble Gauhati High Court in the case of **Krishna Dutta v/s Keshab Chandra Sidhya & Ors. [(2015) 3 GLR 571]**.

10. We have considered the facts and documents on record and rival submissions of the parties in these proceedings. It is observed that admittedly Complainant consists of diverse group of allottees having different concerns and about 2/3rd of them have shown their willingness to stay with project. On account of this, in the composite complaint filed by allottees they appear to have sought various reliefs relevant to their respective interests as per law. The Complainant has submitted all the said reliefs for consideration in this appeal also.



11. It is pertinent to note that one of the reliefs sought by Complainant was for execution of agreement. The said relief came to be granted in addition to couple of other procedural reliefs. However a bare reading of the order will make it clear that certain other reliefs sought by Complainant appear to have remained unaddressed as there is not even a whisper about them in the impugned order. The Complainant has also submitted that the aforesaid relief granted in the impugned order also is yet to be realised as the revised draft agreement supplied by Respondent is alleged to be non-conforming to the model agreement prescribed as per law.

12. As may also be seen from the account given hereinabove, while the Complainant has urged grant of certain other reliefs as they are not considered by the Authority, the Respondent has strongly objected to their consideration in the appeal proceedings. According to Respondent the Authority has not considered and granted the said reliefs as they, though stated in the complaint, were neither pressed nor argued before the authority. Therefore the said reliefs cannot be allowed to be agitated or considered now at the appellate stage. However on careful perusal of the impugned order we find no signs or



recording of any observations to that effect in the order endorsing or supporting the Respondent's view that Complainant has abandoned or failed to plead, press or urge the reliefs stated in their complaint during the proceedings before the Authority. Therefore it is observed that except the reliefs relating to execution of agreement and couple of other procedural reliefs granted in the order, the Authority has not considered certain substantive reliefs sought by Complainant stated in the complaint. We therefore find it hard to accept the contentions of Respondent on this count.

13. In the above background, we are of the view that the adjudication of all issues relating to respective reliefs sought by Complainant as per law in the complaint that remained unaddressed in the impugned order, is crucial and integral to resolve the controversy on hand. Until all reliefs in the said complaint, put forth for consideration of the Authority, are examined and adjudicated in their entirety as per law, the impugned order in its present form cannot be said to be relevant



and applicable in respect of all the allottees for its effective implementation.

14. In view of what is discussed and observed hereinabove, without going into the merits of the case, we feel that to serve the interest of justice the matter needs to be remanded to the Authority for consideration and adjudication of all the issues in their entirety afresh in accordance with law. Hence the following order.

ORDER

- i) Appeal is partly allowed.
- ii) Impugned order dated 10th July 2018 is set aside.
- iii) Matter is remanded to the Authority for consideration and decision afresh of all the issues in their entirety as per law as expeditiously as possible.
- iv) Parties are at liberty to file additional pleadings/evidence as they deem fit.
- v) Parties to appear before the Authority on 2nd May 2019.
- vi) Notice before the Authority stands dispensed with.



- vii) No Costs.
- viii) Inform the Authority accordingly.


(S.S.SANDHU)

(INDIRA JAIN J.)

15. At this stage, Ld. Counsel for Respondent makes two fold submissions:

- i] Stay to the order as Respondent has to carry the same to higher forum and ;
- ii] Change in date from 2nd May, 2019 to 8th May, 2019.

16. Looking to the nature of controversy and the reasons recorded, prayer for stay stands rejected.

17. As Appellant has no objection, date is changed to 8th May, 2019 instead 2nd May, 2019 for appearance before the Authority.


(S.S.SANDHU)

(INDIRA JAIN J.)