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Analysing developments impacting business

MahaRERA to have jurisdiction even where agreement for sale is cancelled prior to RERA

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On 4 June 2018 the Maharashtra Real Estate Regulatory Authority (MahaRERA) passed an order (Order) in the case of *Champatlal Jain, Parvin Dumasia and 6 Others* (Complainants) v *Suriti Developers Private Limited* (MahaRERA Registration Number - P51800003082) (Respondent) and held that though the agreements for sale was cancelled by the Respondent before the Real Estate (Regulation and Development) Act, 2016 (RERA) came into force, the MahaRERA would have jurisdiction to hear and adjudicate such complaints as the consideration paid by the Complainants was *still in possession* of the Respondent.

This Order provides clarity in cases of disputes where the developers allege 'no cause of action' when cancellation of an agreement for sale has taken place before RERA being in force.

Background

The Complainants had purchased apartments in Respondent's project Universal Paradise in Mumbai, between 2007 and 2013.

The Complainants stated that registered agreements for sale (Agreements for Sale) were entered into with the Respondent for purchasing the apartments and that sometime in February 2017, the Respondent unilaterally cancelled the Agreements for Sale. Aggrieved by the termination notices, the Complainants approached the MahaRERA seeking that the Agreements for Sale ought to be declared valid, legal, subsisting and binding.

The Complainants Argued:

- As the project was registered under RERA, MahaRERA had jurisdiction to adjudicate this complaint;
- The Agreements for Sale be declared valid, legal, subsisting and binding;
- The termination notices issued by the Respondent were illegal, bad in law and hence liable to be quashed and set aside; and
- That the Respondent be directed to handover the possession of the apartments and pay interest for the delay in handing over the possession.

The Respondent Argued:

- The MahaRERA did not have jurisdiction to admit the current dispute since the Agreements for Sale were cancelled before the RERA came into force and hence there was no 'cause of action' subsisting on the date when RERA came into force; and
- The Agreements for Sale was cancelled as the Respondent could not fulfil certain obligations because of an ongoing litigation.

MahaRERA Held:

- That though the Agreements for Sale were cancelled by the Respondent before the RERA came into force, in view of the fact that the consideration paid by the Complainants was still with the Respondent, the MahaRERA had complete jurisdiction to hear and adjudicate the complaint.

The Complaint was disposed of by the MahaRERA stating that the MahaRERA had jurisdiction over the present dispute and if the Complainants chose to continue, both parties should execute the Agreements for Sale in accordance with Section 13 of the RERA and in addition, do so within 45 (forty-five) days from the date of the Order.

Comment

- For the first time, there is such an Order which deals with a situation where Agreements for Sale were terminated before the RERA came into force and examines its effect vis-à-vis jurisdiction of the MahaRERA to entertain disputes arising therefrom.
 - The Order has clarified that the scope of RERA also extends to disputes arising prior to RERA, where consideration paid to developers was still with them, after RERA came into force.
 - Stakeholders are anxiously waiting to see if in the case, the Respondent decides to appeal from the Order or accepts the Order of the MahaRERA 'as is'.
 - It is also to be seen, as to what price for the purchase of apartments is finally agreed between the parties, as the Complainants have informed the MahaRERA that the consideration agreed to in the consent terms (before the Bombay High Court) with the other purchasers, was not acceptable to them. Whereas, the Respondent on the other hand, has sought to apply the same parameters as agreed under the consent terms entered with the other purchasers.
- *Sudip Mullick (Partner), Harsh Parikh (Principal Associate) and Swaraj Singh Narula (Associate)*

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