

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

Offline Complaint dated 1-2-2021 filed by the complainant as per order  
dated 20-01-2021 of Hon'ble High Court at Bombay passed  
in W. P. No. 72 of 2021.

M/s. Rukmini Beverage Pvt. Ltd. .... Complainant

**Versus**

1. M/s. Shreeniwas Cotton Mills Ltd.
2. M/s. Lodha Developers Pvt. Ltd.
3. Mr. Kunal Mahesh Modi
4. Mr. Rameshchandra Chechani
5. Mr. Vinod Panalal Shah
6. Mr. Kaluseri Narayanswami Swaminathan
7. Mr. Sanjyot Rangnekar Nilesh
8. Mr. Bhushan Vipinchandra Shah
9. Ms. Shruti Goyal .... Respondents

**Coram: Dr Vijay Satbir Singh, Member I/ MahaRERA**

Ld. Adv. Saurabh Bhutala appeared for the complainant.

Ld. Adv. Ms. Megha Chandra a/w. Adv. Prashant Gawali, Adv. Akshay  
Pare and Adv. Nitin Waghmare appeared for the respondents.

**ORDER**

(26<sup>th</sup> March 2021)

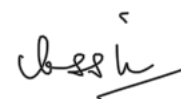
(Through Video Conferencing)

**Facts in Brief--**

1. The complainant herein had certain complaints against the  
respondent-No.1 promoter and therefore it tried to file an online  
complaint against the respondent-promoter. However, the same  
could not be made possible since the said phase of the project  
wherein the complainant had booked its flat was not registered with

MahaRERA by the respondent no. 1. Hence, the complainant filed a writ petition no. 72 of 2021 before the Hon'ble High Court of Judicature at Bombay (Civil Appellate Jurisdiction) against MahaRERA and others making a grievance about the respondents as well as MahaRERA. In the said writ petition, the Hon'ble Bombay High Court was pleased to pass an order on 10<sup>th</sup> September 2020 and issued certain directions to MahaRERA besides directing the complainant to file an offline complaint before MahaRERA. By the said order the MahaRERA was also directed to consider the rectification in the website as complained by the complainant in the said writ petition before the Hon'ble High Court.

2. However, the said order dated 10<sup>th</sup> September 2020 was passed without giving an opportunity of hearing to MahaRERA as a necessary party. Hence, MahaRERA moved a civil application bearing stamp no. 95193 of 2020 before Hon'ble High Court for recalling the order dated 10<sup>th</sup> September 2020 passed by Hon'ble High Court in the aforesaid writ petition. In the said civil application, the Hon'ble High Court was pleased to pass an order on 20<sup>th</sup> January 2021 and directed the complainant to file the complaint in hard copy before MahaRERA and also to appear before MahaRERA on 1<sup>st</sup> February 2021. The Hon'ble High Court further directed MahaRERA to dispose of the said complaint filed by the complainant within a period of four weeks from the date of first hearing.



### **Hearings before MahaRERA**

3. Pursuant to the aforesaid directions of Hon'ble High Court the hearing was scheduled on 1<sup>st</sup> February 2021 before MahaRERA as per the SOP dated 12<sup>th</sup> June 2020 issued by MahaRERA for hearing of the complaints through video conferencing.<sup>1</sup> The link for the said virtual hearing was duly issued / sent to the complainant and accordingly the complainant has appeared for the hearing through its learned advocate. On the said date of hearing, the complainant submitted a hard copy of the said complaint on record of MahaRERA. After hearing the submissions made by the complainant, it was directed to serve the copy of the said complaint to respondents before next date of hearing and the case was adjourned to 9<sup>th</sup> February 2021.
4. On 9<sup>th</sup> February 2021, the respondents appeared through their learned advocate and sought two weeks' time to file its reply on record of MahaRERA. Hence, on the request of the respondents, the case was adjourned to 23<sup>rd</sup> February 2021.
5. Thereafter, on 23<sup>rd</sup> February 2021, MahaRERA heard the submissions made by both the parties. After hearing the arguments advanced by both the parties, the respondents were directed to file their reply and copy of the same to be served upon the complainant on the same date. The complainant was directed to file its rejoinder, if any before the next date of hearing. It was further directed that the technical officer of MahaRERA be called for

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<sup>1</sup> <https://maharera.mahaonline.gov.in/Upload/PDF/Circular%20No%2027.pdf>

hearing. With the said directions the matter was adjourned to 25<sup>th</sup> February 2021.

6. However, on 25<sup>th</sup> February 2021 the hearing could not be conducted due to technical problems and it was rescheduled to 26<sup>th</sup> February 2021. Both the parties were informed about the same accordingly.
7. On 26<sup>th</sup> February 2021 both the parties made their submissions partly and sought sufficient time to argue this case. Both the parties volunteered to get an extension from the Hon'ble High Court. Hence, on request of the parties, the case was adjourned.
8. Thereafter, the parties failed to submit any order of Hon'ble High Court for extension of the time period for the disposal of this case. Hence, this complaint was again listed for hearing on 3<sup>rd</sup> March 2021 and the parties were called for hearing.
9. On the said date of hearing, both the parties appeared through their respective learned advocates and made their submissions. During the course of hearing, the respondents submitted a copy of order dated 1<sup>st</sup> March 2021 passed by Hon'ble High Court in writ petition (L) no. 1118 of 2021 and stated that the present complaint is not maintainable in the view of said order. Hence after hearing the arguments / submissions made by the respondents, the complainant was directed to file its reply to the said submissions made by the respondents within a period of two days.

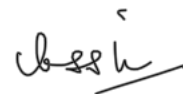
10. However, though specific direction was issued to the complainant to get the extension from the Hon'ble High Court for deciding this offline complaint and also to file its reply to the order dated 1<sup>st</sup> March 2021 passed by Hon'ble High Court in writ petition (L) no. 1118 of 2021 submitted by the respondents, the complainant has not complied with the said directions. Thereafter, on 15<sup>th</sup> March 2021 the learned advocate for the complainant sent email on record of MahaRERA and sought further two days' time to file its reply/written submissions in the subject matter. However, till date the complainant has failed and neglected to file any written submissions to the issues raised by the respondents during the course of hearing. Hence, MahaRERA has no other alternative but to pass an order in this complaint based on the available records.

**Arguments of the complainant:**

11. It is the case of the complainant that it is an allottee as defined under section 2(d) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as **RERA**) in the project undertaken by the respondent No. 1 promoter. It has stated that that in the year 2010, the respondent No.1 viz. Shreeniwas Cotton Mills, (hereinafter referred to as the '**respondent promoter**') a sister concern of the respondent No. 2 viz M/s. Lodha Developers Pvt. Ltd. had advertised its project "**World One**" by issuing various hoardings and brochures as the tallest tower of 117 floors. The complainant had approached the respondent no. 1 for purchase of a flat in the said project. At that time, the respondent promoter



represented that it is the tallest tower in the world. The respondent further assured that it will provide all amenities as mentioned in the brochure and based on the said representation, it booked a flat bearing no.3701 adm. 1946 sq. ft. carpet area on 37<sup>th</sup> floor along with two car parks for total consideration amount of Rs. 10,76,36,688/-. At the time of the said booking, the price of 3 BHK flat in Worli area was Rs. 5,00,00,000/- and accepting the said double price it booked the said flat in the respondent's project. However, the respondent promoter without obtaining its consent reduced the height of the building and modified the plan which is illegal and contrary to the provisions of MOFA as well as RERA. Further, as per the registered agreement to sale, the respondent promoter agreed to handover possession of the said flat to the complainant on or before 30 November, 2016. However, it failed to fulfil its commitment. Hence the complainant was entitled to seek refund along with interest under the provisions of section 18 of the RERA. The complainant further stated that the respondent promoter reduced the height of the said building and now the same will not be the tallest building in the world and hence it is desirous to withdraw from the project. The complainant stated that till date, it has paid an amount of Rs. 11,81,45,061/- to the respondent. The complainant further stated that after commencement of RERA, the respondent promoter has registered this project bearing no. P5190008345 from 43<sup>rd</sup> to 80<sup>th</sup> floor with MahaRERA. It has further contended that although there is an option to file online complaint against the unregistered project seeking registration of the same, there is no option to upload a comprehensive complaint along with



all enclosures to seek relief such as possession / interest for delayed possession / refund / compensation etc. Hence, it had approached the Hon'ble High Court of Judicature at Bombay mainly seeking directions to MahaRERA to register its comprehensive complaint against the respondent-promoter claiming various reliefs as contemplated under the provisions of RERA and to decide the same on its own merits.

12. During the course of hearing, the complainant has stated that on the date of commencement of RERA, the respondent promoter had not obtained the occupancy certificate for the phase in which it has booked the said flat. However, it has obtained part occupancy certificate on 29-07-2017 and hence it ought to have registered the said phase with MahaRERA. Further the respondent promoter has violated various provisions of RERA and hence its rights under RERA cannot go away just because it has not registered the said phase. Therefore, it has prayed to allow this complaint being maintainable before the MahaRERA.

### **Arguments of the respondents**

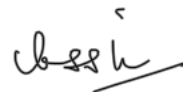
13. The respondent promoter on the other hand has resisted the claim of the complainant mainly on the ground of maintainability of this offline complaint. It has stated that the complainant has filed this complaint after taking possession of its flat on 18-12-2019, which was offered in the month of November 2018, by availing the rental offset given by it. Further the occupancy certificate for its flat was obtained on 29-07-2017 within the 3 month period after

commencement of RERA and hence it has not registered the said phase with MahaRERA. To support its contention, on 03-03-2021, the respondent promoter has submitted a copy of judgment and order dated 01-03-2021 passed by the Hon'ble High Court at Judicature at Bombay in W. P. (L) No. 1118 of 2021. It has stated that a similar issue was raised in this complaint which has been dealt with by the Hon'ble High Court in the aforesaid writ petition and now it is held that when the occupancy certificate was obtained before the deadline for registration, it was not required to register the said phase under RERA. Since the complainant's flat is located in the part of the project not registered, the provisions of RERA don't apply. Hence, it has prayed for dismissal of this complaint being not maintainable.

**Issues, discussion, conclusion and order:**

14. The MahaRERA has examined the arguments advanced by both the parties. The complainant by filing this offline complaint is seeking following reliefs under various provisions of sections 3, 12 and 14 of the RERA:

- a) To direct the respondent promoter to register phase I of the said project with MahaRERA.
- b) To direct the respondent promoter to refund the entire amount of Rs. 11,81,45,61/- to it along with interest at the rate of 10.85% from the date of payment till the actual realisation of the said amount and also to pay compensation of Rs. 10,00,000/- for the mental agony suffered by it.



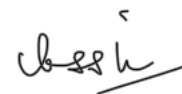


15. On an analytic examination of the present case, prima facie it appears that the respondent no. 1 is the promoter of the said project and the sister concern of the respondent no. 2. The respondent nos. 3 and 4 are authorised representatives of the respondent no. 1 and the respondent nos. 5 to 9 are the directors of the respondent no. 1. The complainant has contended that in the year 2010, it has booked its 3 BHK flat bearing No. 3701 on 37<sup>th</sup> floor in the project undertaken by the respondent no. 1 known as "**World One-Tier II**" for total consideration amount of Rs. 10,76,36,668/- along with 2 car parking spaces. The allotment letter was issued to the complainant on 11-11-2010. It has further contended by the complainant that according to the said allotment letter, the respondent promoter was liable to handover possession of the said flat to it on or before 30-11-2016 including the grace period of 12 months. Thereafter, the registered agreement for sale was executed between them on 25-10-2012. As per clause nos. 12.1 and 12.2 of the said agreement, the respondent promoter was liable to handover possession of the said flat on or before 30-11-2016. However, the actual possession was offered to it on 13-11-2018 and the keys were offered to it on 29-01-2019. The complainant therefore contended that the respondent promoter has not handed over possession of the said flat on the agreed date of possession. Further, the respondent promoter represented that the said building would be the tallest building of 117 floors in the world and believing in the said representation it has booked the said flat. However, the respondent promoter has also changed the building

plans without obtaining consent of the complainant and thereby violated the provisions of sections 12 and 14 of the RERA. The complainant further contended that on the date of commencement of RERA the occupancy certificate was not obtained to its flat and hence, the respondent promoter was liable to register the said phase of the project with MahaRERA under the provisions of section 3 of the RERA.

16. The said contentions have been denied by the respondent promoter by raising a preliminary issue of maintainability of this complaint filed by the complainant on the ground that the phase in which the complainant has booked the said flat has not been registered with MahaRERA. Further, the MahaRERA has no jurisdiction to try and entertain the complaint which was not been filed under the MahaRERA registered project. Hence it has prayed to dismiss the complaint. To support its contention, the respondent promoter has relied upon the judgement and order dated 01-03-2021 passed by the Hon'ble High Court in W. P. (L) No. 1118 of 2021.

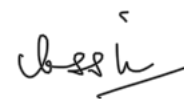
17. The complainant though has been granted sufficient opportunity to file its written submissions on the said judgement relied upon by the respondent promoter, it has failed and neglected to submit its reply on record of MahaRERA. Moreover, even specific direction was given to both the parties to get the extension from the Hon'ble High Court to decide this complaint. However, no steps seem to have been taken by the complainant. Hence, the MahaRERA has no



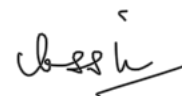
other alternative but to decide this complaint based on the available record and arguments of the parties.

18. Considering the rival submissions made by both the parties, prima facie it appears that the phase of the project wherein the complainant has booked its flat is not registered with MahaRERA, since the occupancy certificate for the said phase was obtained before the registration. However, on bare perusal of the judgment and order dated 01-03-2021 passed by the Hon'ble High Court at Bombay in W. P. (L) No. 1118 of 2021, as relied upon by the respondent promoter, two important observations of the Hon'ble High Court in the order (Supra) are relevant to decide the question whether the present complaint is maintainable or not. Firstly, the provisions of RERA are applicable after the project gets registered. In this regard, the Hon'ble Court has reiterated and confirmed the ratio held by the Full Bench of Hon'ble High Court at Judicature at Bombay in Neelkamal Realtors Suburban Pvt Ltd. Vs Union of India & Others which is reproduced as under: -

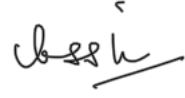
**“After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the projects registered. In that sense, the application of project is prospective in nature” (Para 89)”**



19. It is, therefore, clear that the provisions of RERA apply after the project gets registered. Obviously, the RERA does not apply to the projects which do not require registration or the phase of the project which had already completed and hence, does not require registration.
20. Another observation made by the Hon'ble High Court is that the phase of the project in which the complainant is an allottee does not require registration in case it received completion or occupancy certificate before the deadline given for registration of the said project.
21. Likewise in the present case, the complainant is an allottee in the phase of the project which does not require registration as clarified by the Hon'ble High Court in the aforesaid order. It shows that the complainant is not an allottee in the registered project.
22. In view of the aforesaid judgement, it is now clear that the MahaRERA can't decide this complaint which is concerning a completed and unregistered phase of the project. Therefore, the present complaint is not maintainable, and therefore the prayers sought by the complainant stand rejected.
23. Consequently, the complaint stands dismissed.



24.The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the same to both the parties by e-mail.



(Dr Vijay Satbir Singh)  
**Member 1/MahaRERA**

