

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

COMPLAINT No: CC00600000023182

Mr. Sachin S. Shardul, Mr. Suresh S. Shardul and 6 others ..... Complainants

**Versus**

M/s. The K T Group Ujjwala

MahaRERA Registration No. P51800003743 ..... Respondent

Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

Adv. Shirish Deshpande a/w Adv Shashikant Kadam appeared for the complainants.

Adv. Dharmesh a/w Adv Dhawal Sanghani appeared for the respondent.

**ORDER**

(14<sup>th</sup> May, 2018)

1. The complainants are the allottees in the MahaRERA registered project bearing No. P51800003743 known as "Dahisar Ujjwal CHS Ltd" at Dahisar, Mumbai. They have filed this complaint seeking directions to the respondent to pay interest for the delayed possession and compensation for mental agony under section 18(3) and 19(4) of the Maharashtra Real Estate (Regulation and Development) Act, 2016, to execute the registered agreement for sale with the complainants, and to form a Society of the members who have booked the flats in the said project.
2. This matter was heard on merits. The complainants argued before this Authority that the respondent promoter is implementing the re-development project of Dahisar Ujjwal CHS Ltd., the owner of the plot of land under reference. The concerned planning authority viz., MCGM has

issued commencement certificate in the year 2010. The complainant booked the flats in the said project and paid 20% amount to the respondent, who issued them allotment letters. However, he has not signed the agreements for sale in spite of repeated requests by the complainants.

3. In the year 2012, the respondent executed the registered agreement for sale with some of the allottees (other than the complainants). However, the project has remained incomplete and without any progress for the last four years. Further, at the time of booking of the flats the respondent had given a brochure showing the building comprising of 17 floors. But, in MahaRERA registration, he has shown a 21 floor building. He has submitted false information about the proposed date of completion of the project. Thereby, he has violated section 4(2) of the RERA Act. The complainants, therefore, requested to allow their complaint.
4. The respondent stated that due to change in the DCR, he sustained losses in the project. However, he is ready and willing to complete the project. He, further, stated that he was not guilty of furnishing false information as alleged by the complainants since he is bound to handover parking to the original members of Dahisar Ujjwala CHS Ltd. The respondent also argued that the complainants had made default in payments towards the slab-wise installments resulting in delays and cost escalation. This caused him heavy financial loss. The respondent submitted the chart showing the details of defaulters. The complainants cannot seek any relief from this Authority as per re-development agreement dated 2-09-2009 executed with the society, because they were not party to the said agreement. With regard to the formation of the society, the respondent stated that as per the re-development agreement, he is bound to admit new members to the co-operative society on completion of their full and final payment with all applicable terms.

5. From the rival submissions made by both the parties, it is clear that the present complainants are seeking reliefs under Section-18(3) and 19(4) of the Real Estate (Regulation & Development) Act, 2016. According to Section-18 (3) of the said Act, the allottees become entitled for compensation if the promoter fails to discharge any other obligation imposed on him under this Act and Rules and Regulations made there under or in accordance with the terms and conditions of the agreement. In absence of agreement for sale, Section 18 has no role to play. Moreover, issuance of allotment letter is first stage of the booking and agreement for sale is the subsequent stage. Further, section 19(4) of the RERA Act, 2016 provides that the allottees are entitled to claim refund of amount paid along with interest and compensation due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or Rules and Regulations made there under. In view of the facts of this case and since no registered agreement is executed between the parties, the provisions of section 18 and 19 of the Real Estate (Regulation & Development) Act, 2016 can't be applied to give any relief to the present complainants.
  
6. As far as violation of provision of section 4 (2) of the RERA Act by the respondent, it was observed that the respondent had uploaded the information on MahaRERA website as per the permission by the planning authority viz., MCGM, i.e. to have the building with stilt and 21 storeys. Hence, there is no violation of provision of section 4(2) of the RERA Act, 2016.
  
7. With regard to the execution of registered agreement for sale, admittedly the complainants allottees have paid more than 10% amount towards the booking of their respective flats and therefore, as per the provisions of Section-13 of the RERA Act, 2016, the respondent is liable to execute the registered agreement for sale with the complainants.

8. As far as the formation of society of the allottees is concerned, there are total 122 sale flats in this project, out of which, 110 flats have already been sold to different allottees. Therefore, as per the provision of Section 11(4) of the RERA Act, the respondent/ promoter is supposed to form the society of the new allottees who have booked their flats in the project.
9. During the hearings, it was brought to the notice of this Authority that the Dahisar Ujjwal CHS Ltd. is the owner of the plot under reference and the respondent is implementing the project. However, the said society being owner of the project has not been joined as owner /promoter in the MahaRERA registration. This requires to be corrected since the owner is also promoter and equally liable to develop the project.
10. In view of the aforesaid facts, this Authority pass following order;

**ORDER**

- i) The respondent is directed to execute registered agreement for sale with the complainants at the earliest.
- ii) The respondent is directed to enable the formation of society of the new allottees, as provided under the provision of Section 11(4)(e) of the RERA Act.
- iii) The respondent is also directed to join the name of Dahisar Ujjwala CHS Ltd. as owner/promoter in MahaRERA registration No. P51800003743.

11. With these directions, the complaint stands disposed of.

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

