



Chhattisgarh Real Estate Regulatory Authority, Raipur

Complaint No-M-PRO-2022-01834

**BEFORE
(FOR AND ON BEHALF OF C.G.R.E.R.A.)
(Deepa Katare, Adjudicating Officer)**

Smt. Deepa Santosh Kedia, W/o Shri Santosh Kedia,
Address- C-74, 7/F,
Vasundhara Apartment, S.V. Road,
Borivali West, Mumbai (Maharashtra) **Complainant**

V/s

Shri Abhishek Bachhawat,
Address-Vardhman Villas Pvt. Ltd.,
TH-14, 3rd Floor, Shyam Plaza,
Pandri, Raipur (C.G.) **Respondent**

Present :-

(1) Shri Shashwat Surana, Learned Counsel for Respondent.

**(Project- “Vardhman Sky Line”, New Rajendra Nagar, Raipur)
RERA Registered No.- PCGRERA060618000064
Order dated 19.04.2023**

1. The Complainant has filed instant complaint under section-31 of Real Estate (Regulation and Development) Act, 2016 in FORM-M for refund of Rs. 19,913/- (Rs. Nineteen thousand nine hundred thirteen only) and compensation of Rs. 1,00,000/- (Rs. One lakhs only).
2. From the rival contentions of both the parties the undisputed facts emerges in the case are that parties has drafted two sale deed. Earlier drafted sale deed was signed by both the parties and subsequent drafted sale deed was sent by respondent to complainant via email on 17-02-2021 for her approval and thereafter registered sale deed dated was executed between the parties on 22-02-2021.
3. Pleaded case of complainant is that complainant has already paid 24 months management fee of Rs. 1,02,600/- at the time of registry of flat dated 22-02-2021 to the developer. Though CC received on 13.01.2021 the developer is still claiming 6 months additional management fee and harassing complainant and

her tenant (on phone Calls) of terminating services like lift, water supply, electricity, gas, etc. if it is not paid immediately. The management office at the Vardhman Sky line (admin in charge by the developer) is denying complainant Whatsapp messages saying they have other important matters to handle and no time to revert to their questions. The admin office has not send any valid prior intimation of terminating the services. To comfort her tenant complainant had paid three month management fee unwillingly. Therefore, complainant has filed instant complaint for the relief (s) as referred in clause (1) of this order.

4. The respondent beside denying the contentions of complainant vehemently, specifically submitted that complainant is seeking relief in respect of refund of maintenance due, despite herself not paying the maintenance dues as per the agreed terms of the registered sale deed. Complainant after fully reading and understanding the terms and condition as incorporated in sale deed proceeded to execute and registered the sale deed. After taking possession of her unit complainant has rented the same flat to her tenant. The complainant has paid maintenance dues only till 30-09-2022 and the same fact has been specifically mentioned in Registered sale deed executed between the parties which is concealed by the complainant and in place of actual registered sale deed draft sale deed which was never affirmed and registered has been filed by the complainant to take the undue financial advantage from the respondent and after which the complainant is liable to pay the maintenance charges which is only being delayed by the complainant stating under one or other pretext. When the demand for the recovery of maintenance dues has been issued to the complainant the complainant refused to pay the maintenance dues and also maintenance staff of the project has been in humanly abused by the complainant husband.
5. The respondent further contended that as the process of Society registration has already been initiated in the project the respondent despite being entitled to claim 24 months advance maintenance only requested for 6 months maintenance within which the Project would have been handed over to the Society of allottees and thereafter the Society of allottees shall collect maintenance charges and maintain the project. Therefore respondent requested to dismiss the complaint

and the complainant be directed to pay balance outstanding maintenance dues of remaining 3 months, interest thereon and the cost of Rs. 25,000/-.

6. From the rival contentions of both the parties and on perusal of material on record following are points for determination to adjudicate the controversies between the parties: -

- i. Whether the complainant has paid maintenance charges of Rs. 1,02,600/- (Rs. one lakh two thousand six hundred only) for 2 years at the time of execution of registered sale deed ?
- ii. Relief (s)

7. **Points For Determination No. (I)**— Prior to the appreciation of point for determination no. (I) it is apt to mention here that the burden of proving the facts of his pleading lies upon the complainant herself only and complainant is not allowed to take advantages of weakness of respondent. Complainant has filed mere undated earlier drafted copy of sale deed signed by the parties and not the duly registered sale deed. It is relevant to mention here the provision of The Registration Act under **Section 49** which reads as under-

“No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall —

- a) **affect any immovable property comprised therein, or**
 - b) confer any power to adopt, or
 - c) **be received as evidence of any transaction affecting such property or conferring such power,**
- unless it has been registered:**

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, 2 [* * *] or as evidence of any collateral transaction not required to be effected by registered instrument.”

8. Though the said drafted copy of sale deed is not admissible in evidence in the light of above referred law but it may be used in evidence for collateral purpose. i.e. to ascertain the fact that whether complainant has paid the maintenance charges of Rs. 1,02,600/- for the period of two years. Having regard to the

controversy it will be appropriate to quote the relevant clause of drafted sale deed which reads as under-

“(V) Maintain the common facilities and services like lift, corridors, passages, staircases, roads, drainage, water supply, electricity and other properties of common enjoyment and the land upon which the said condominium is constructed shall vest jointly in the owners of the various apartments / shops / offices and shall be maintained managed and administered collectively by the said owners of the various apartments / shops / offices by the Association that may be formed by the owners. The vendor shall in no manner be liable accountable or responsible for the management, administration, maintenance or up keep of the aforesaid building or the common facilities etc. or for any other account whatsoever. At present no association has been formed, therefore, vendor is maintaining the common area and facilities, Roads, storm Water drains, Street light, Main gate, Outside drainage.

The Promoter will charge Rs. 1,02,600/- (Rs. one lakh two thousand six hundred only) plus GST (as applicable) for two year and it will be payable by the allottee at the time of registry of final sale deed as a separate cheque. If for any reason formation of association of allottee is delayed (notification no. - --) the promoter will charge the cost of maintenance from the allottee after expiring of 2 (two) year from the date of possession at the rate decided by the promoter their in and the allottee agrees to pay the same.”

9. At this juncture it is also relevant to mention here relevant clauses of registered sale deed dated 22-02-2021 (Annexure- RD/1) filed by the respondent

"Clause 10 of the sale deed:

MAINTENANCE OF THE SAID BUILDING/ APARTMENT/ PROJECT

...The Vendor Earlier Party shall be responsible to provide and maintain essential services in the project till the taking over of the maintenance of the project by the association of Purchaser, the cost of maintenance till 30-09-2022 is included in the price. If in case Society has not been formed till 30-09-2022, the Purchaser shall be liable to pay maintenance for next 2 years in advance at price as determined by the builder/seller".

10. An overall reading of above referred clauses of earlier drafted sale deed, registered sale deed, pleading and others document filed by the parties following factual position emerges that in earlier drafted sale deed it has not been mentioned anywhere that complainant has paid the amount of Rs. 1,02,600/- (Rs. one lakh two thousand six hundred only) on count of maintenance charges for two years while signing earlier the drafted sale deed. In instant complaint complainant has pleaded that she has paid the amount of Rs. 1,02,600/- at the time of registry of her flat i.e. on 22-02-2021. Said fact is corroborated and substantiated by the earlier drafted sale deed on which complainant has placed more the reliance. It has been clearly mentioned in clause (v) of earlier drafted sale deed that maintenance charges of Rs. 1,02,600/- will be payable at the time of the registration of final sale deed by a separate cheque. Said fact is acknowledged and admitted by both the parties in the drafted sale deed itself.
11. Thus on the reading of clause 5 of the earlier drafted registered sale deed it become clear that at the time of signing it said amount of Rs. 1,02,600/- was not paid by the complainant. In registered sale deed dated 22-02-2021 it has been clearly mentioned in clause (10) that the complainant has paid consideration of Rs. 48,61,147/- (Rs. forty eight lakh sixty one thousand one hundred forty seven only) which is inclusive of maintenance charges till 30-09-2022. If in case society has not be formed till 30-9-2022 the complainant shall be liable to pay the maintenance for the next 2 year in advance at the price as determined by the respondent. Said fact is also admitted and acknowledged by the both the parties in registered sale deed itself and the same has binding efficacy upon both the parties. It will be apt to mention here that complainant has not denied the contents of the duly registered sale deed dated 22-02-2021.
12. By virtue of clause (10) of registered sale deed dated 22-02-2021 it is pellucidly clear that complainant has paid the maintenance charges of the common areas for the 19 month only i.e. upto September and from October maintenance charges were due and to be paid by complainant to the respondent. Consequently respondent had sent the demand notice dated 08.10.2022 to the complainant for the payment of maintenance charges due on complainant. Thus as per terms and conditions of registered sale deed dated 22-02-2021 the complaint was under the

contractual obligation to pay the maintenance charges from 01:10 2022 , said fact is also corroborated by the demand notice dated 08-10-2022 submitted by the complainant herself.

13. Contentions put forth by the complainant in her written final argument is that she has received the soft copy of subsequent drafted sale deed on 17.02.2021 via email and she pointed out the discrepancies under Clause (10) of the subsequent drafted sale deed but the concerned person of the respondent reassured her that date mentioned under the clause (10) will not affect her in terms of maintenance fees in future as she has already paid 2 year maintenance fees to respondent. Thus it is admitted by the complainant that she has received the soft copy of subsequent drafted sale deed via email on 17th Feb 20 21 and the sale deed was duly executed and registered on 22.02.2021 i.e. after the 5 days so it could not be reasonably inferred that registered sale deed was executed by the complainant on a very short notice or under any undue influence of the respondent or without her free consent.
14. In written final argument complainant further reiterated that she has paid the maintenance fees to the respondent for the period of 2 years as per earlier drafted sale deed signed by both the parties. It is pertinent to mention here that the earlier drafted sale deed which was signed by both the parties was substituted and replaced by the subsequent drafted sale deed attached with the email dated 17-02-2021 sent by the respondent to the complainant and the same was approved by both the parties. Thus earlier drafted sale deed signed by the parties was modified and replaced by the subsequent drafted sale deed which was duly registered and executed on 22-02-2021 by both the parties. At this juncture it is relevant to extract the provision of the **section 62 of the Indian contract act** which reads as - “If the parties to a contract agree to substitute a new contract for it, or to rescind or **alter it**, the original contract need not be performed.”
15. In view of above it is held that the both the parties had mutually modified and altered the terms and condition of earlier drafted sale deed and duly incorporated the modified terms and condition in the registered sale deed dated 22-02-2021 therefore the contractual liabilities of both the parties would be discharged to the

modified terms and conditions also i.e. all the terms and condition of the registered sale deed will be binding upon the both the parties. In this context it is pertinent to mention here that complainant has not submitted duly executed registered sale deed dated 22-02-2021 in which it was admitted and acknowledged by parties that the maintenance charges were included in consideration of sale and it was upto 30-09-2022 only. The conduct of complainant reflect that she has willfully suppressed and concealed the material facts in her complaint and completely relied her pleading upon undated earlier drafted sale deed which was not the actual draft of sale deed i.e. she has suppressed the material fact that the earlier drafted sale deed was superseded by the subsequent drafted sale deed which thereafter had been duly executed and registered on 22-02-2021. Even if the earlier drafted sale deed is considered then also it could not be ascertained that the complainant has paid maintenance charges for the period of two years because as mentioned earlier the maintenance charges for the 2 years i.e. Rs. 1,02,600/- was payable at the time of execution of registered sale deed of the apartment of complainant that too by a separate cheque.

16. In earlier drafted sale deed cost of the apartment was mentioned as Rs. 45,55,000/- and till signing of earlier drafted sale deed complainant has paid total amount of Rs. 42,75,851/- only. In registered sale deed dated 22-02-2021 it has been clearly mentioned that complainant has paid only the cost of apartment along with amount of Rs. 3,07,147/- as ST and GST i.e. the total amount of Rs. 48,62,147/- (Rs. 45,55,000/- + Rs. 3,07,147/-) was paid by the complainant meaning thereby maintenance charges shown in earlier drafted sale deed was included in the cost of apartment i.e. Rs. 45,55,000/- in the duly registered sale deed. Thus in view of above it has not been established that complainant has paid the maintenance charges for complete 2 years and therefore she is not entitle for the refund of 3 months maintenance charges i.e. Rs. 19,913/- (Rs. Nineteen thousand nine hundred thirteen only). Accordingly point for determination number 1 is being decided in negative.
17. **Points For Determination No. (II)**– Complainant has also sought the relief of compensation of Rupees 1,00,000/- (Rs. One lakhs only) for the mental

harassment. It is worthwhile to mention here that the provision of section 31 read with the Rule 36 of the The Real Estate (Regulation and Development) Act 2016, prescribed the procedure, form, manner and the fees for filing the complaint for relief of compensation which has not been complied with by the complainant. Complainant has not mentioned on what count and in what manner the respondent has contravened the provision of section 12,14,18 and 19 of The Real Estate (Regulation and Development) Act 2016, therefore for the want of proper pleading and appropriate complaint relief claimed by the complainant could not be granted.

18. Respondent pleaded that the complainant be directed to pay balance outstanding maintenance dues of remaining 3 months, interest thereon and the cost of Rs. 25,000/-. It is worthwhile to mention here that the provision of section 31 read with the Rule 35 of The Real Estate (Regulation and Development) Act 2016, prescribed the procedure, form, manner and the fees for filing the complaint before the Authority, which has not been complied with by the respondent. Therefore for the want of appropriate complaint relief claimed by the respondent could not be granted.
19. As complainant has failed to prove her claim, she is not entitled to any relief she prayed for.
20. With the above instant complaint stand dismissed.

Raipur

Dated: 19-04-2023

Sd/-
(Deepa Katare)
Adjudicating Officer
Real Estate Regulatory Authority
Chhattisgarh Raipur