

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI.

COMPLAINT NO: CC006000000078620

Techno Dirive Engineer Pvt. Ltd.

... Complainants.

Versus

Renaissance Indus Infra Pvt. Ltd.

...Respondents.

MahaRERA Regn: P51700010971

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

Appearance:

Complainants: Adv. Mr. Satish Dedhia.

Respondents: Adv. Mr. Manish Gala.

FINAL ORDER

26th November 2019.

Whether the Real Estate (Regulation & Development) Act, 2016 (RERA) applies to the Industrial Units/projects, is the legal issue involved in this complaint.

2. The complainants contend that they booked Unit No. 008 measuring 1892.50 sq.ft. and Unit No. 009 admeasuring 1524.84 sq.ft. in building A-2 of the respondents' registered project Renaissance Industrial Park now renamed as Renaissance Industrial Smart City situated at Village Vashere, Taluka Bhiwandi, District Thane. The respondents failed to hand over the possession of the units on agreed date 31.05.2015. Therefore, the complainants

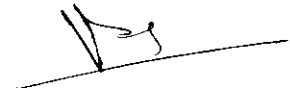


withdraw from the project and claim refund of their amount with interest and compensation.

3. The respondents have pleaded not guilty. They have filed their reply basically to raise objection that the provisions of RERA are not applicable to the industrial units booked by the complainants and therefore, they have requested to dismiss the complaint. The other pleas raised by the respondents are not relevant at this stage for the decision of the complaint. Hence, I restrain myself from mentioning them.

4. I have heard the learned advocates of the parties.

5. The only relevant issue which decides the fate of the complaint is, whether the units booked by the complainants are industrial units situated in industrial project and whether RERA applies to them or not. For this purpose, I have gone through the complaint and the documents placed by the complainants on record. It is clearly mentioned in the documents that the units are described as 'estate units' and they are of big size. It is mentioned in the documents that the units of Renaissance Industrial Park are agreed to be purchased for setting up industrial business of manufacturing and permitted under Industrial location Policy which is more particularly described in second schedule of the agreement. The industrial inspector has mentioned in 'Entrepreneur memorandum acknowledgment' marked Exh."G" of the complaint that the respondents are the Manufacturers of Pneumatic Conveying Systems, agitators, special purpose machines. In the agreement also there is mention of various permissions obtained for setting up the industrial units/project.



After taking them into consideration, I find that the industrial project of the respondents is in industrial area notified by Urban Development Department of Maharashtra on 21.08.2009. The industrial department also declared it as industrial area on 06.04.2016 and Maharashtra Industrial Development Corporation notified it as such on 30.04.2016. The respondents have obtained final industrial zone conversion notification on 09.02.2017 by virtue of it the area is converted from green zone to industrial zone. After taking all these facts into consideration, I find that the complainants have booked the units for setting up their industrial manufacturing units and hence, the booked units are the industrial units.

6. Now, I shall consider the relevant provisions of RERA. Section 2 (e) defines apartment as under:

“Apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential, commercial use such as residence, office, shop showroom or godown or for carrying on any business, occupation, profession or trade or for any other type of use ancillary to the purpose specified; “

At this stage, it is convenient to read the definition of the flat defined by Section 2(a-1) of Maharashtra Ownership Flats Act 1963. It reads as under-



“Flat” means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown or for carrying on any industry or business and includes a garage, the premises forming part of a building and includes an apartment.”

After comparing these two definitions, I find that the MOFA is applicable to the premises used for carrying on any industry whereas the definition of the apartment does not include the industrial purpose and therefore, there remains no doubt in my mind that the industrial units are not included in the definition of apartment defined by RERA.

7. Thereafter, I turn to the definition of Real Estate Project defined by Section 2 (zn). It is,

“ real estate project “ means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

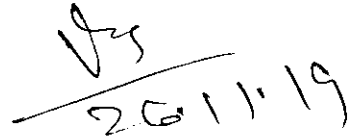
8 After perusing this definition, I find that the apartments, plots or buildings are included in the definition. Since the industrial units do not come into the definition of apartment as discussed above, I find that the building consisting of the industrial units or part thereof will not amount to Real Estate Project defined by RERA.



9. After looking into these legal aspects of the matter, the only conclusion which can be drawn is, the provisions of RERA are not applicable to the industrial units. The learned advocate of the respondents submits that though the building is registered as Real Estate Project by the respondents with MahaRERA, some part of it is for the godowns. After taking these matters into consideration, I hold that RERA is not applicable to the units booked by the complainants and therefore, the question of contravention or violation of its provisions does not arise. Hence, complaint is dismissed.

Mumbai.

Date: 26.11.2019.



(B. D. Kapadnis)
Member II, MahaRERA,
Mumbai.