

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: CC00600000043984

Haresh Ishwar Manwani ... Complainant.

Versus

Reliance Enterprises. Respondents.
(Hill View)

MahaRERA Regn: P51800005482

Coram:

Hon'ble Shri B.D. KAPADNIS.
Member & Adjudicating Officer,
MahaRERA, Mumbai

Appearance

Complainant: In person.

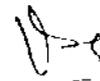
Respondents: Adv. Divya M. Chopra

Final Order.

10th September 2018.

Pleadings of complainant.

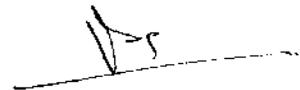
The complainant has filed this complaint u/s. 18 of Real Estate Regulation and Development, Act 2016 (RERA). He contends that he booked Apartment No. 902, B-Wing of Respondent's Hill View project situated at Chembur. This apartment is in the sale component of the Respondents' SRA project. The respondents agreed to deliver the possession of the flat on or before 31st May 2015. The respondents have failed to deliver the possession of the flat by 31st May 2015. The complainant wants to withdraw from the project and claims his amount with interest and compensation.



Defence of respondents.

2. The respondents have filed the reply to submit that the complainant was aware of the fact that the project was being developed under SRA scheme and therefore the possession of his flat was likely to be delayed beyond the agreed date of possession. Not only that, this was the tentative date depending upon the availability of the building materials and the possession was likely to be delayed because of the Govt. Rules, orders, regulations, etc. They admit that they have not handed over the possession of the flat to the complainant on agreed date because the letter of intent required them to seek various permissions and approvals mentioned in it. The main reasons which delayed the project are;

1. Acquisition of CTS No.148, the adjoining plot. One of the conditions is to acquire this private plot and to include it in the scheme. Its owner was not traceable and therefore the acquisition proceeding was started by SRA on 30.03.2015. But thereafter the said authority did not follow it up and the plot is not yet acquired. Hence, FSI of the same plot has not been granted to the respondents.
2. D.P. Road setback by MCGM- as per the condition laid down by LOI, the respondents' Architects applied to MCGM on 25.11.2013 to get D.P. Road setback land demarcated from A.E.



(Survey/D.P./TNC/Dept. of MCGM) and to hand it over free of cost and free of encumbrances to MCGM for obtaining CC for the last 25% of sale built up area. However, they did not get any response from 25.11.2013.

3. NOC for 60 mtrs. Wide Anik Bandra Pinjrapole road. In this context to meet the requirement of L.O.I. they applied on 28.12.2009, however, on 23.4.2010 they received a letter from MMRDA to rehabilitate a mosque. On 20.4.2012 they explained their inability to accommodate the said mosque in SRA scheme and that issue was pending till 13.10.2016 when they filed revised application for NOC.
4. High Rise NOC : They applied for High Rise NOC on 10.03.2013. The concerned authority issued it on 19.04.2017.
5. Revised LOI letter dated 7.6.17 - The application for revised LOI has been submitted on 7.6.17 and it is pending. Hence, they contend that the project is delayed.

3. Therefore, respondents contend that the complainant is not entitled to get the refund of his amount especially when the project is nearing its completion.

4. The following points arise for determination. I record my findings thereon as under: -



POINTS.

FINDINGS.

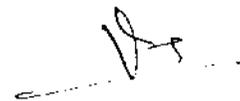
1. Whether the respondents failed to deliver the possession of the flat on agreed date? Affirmative.
2. Whether the respondents have been prevented by the causes beyond their control from completing their project in time? Negative.
3. Whether the complainant is entitled to get refund of his amount with interest? Affirmative.

Reasons:

Legal Provision. -

5. Section 18 of RERA provides that when the promoter fails to complete or is unable to give possession of apartment in accordance with the terms of the agreement for sale or duly completed by the date specified therein, he shall be liable, on demand to the allottees in case allottee wishes to withdraw from the project, to return the amount received by him with interest at prescribed rate and compensation also.

6. The rules framed under the Act have prescribed the rate of interest. It is 2% above the State Bank of India's highest marginal cost of lending rate. It is currently 8.5%. Hence, the allottee is entitled to get the interest @ 10.5% from the date of default till handing over the possession of the flat.



Delayed Possession:

7. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flat to the complainant by the end of May 2015 but they have not delivered it till the date of complaint. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

Reasons for Delay:

8. The learned Advocate of respondents submits that the respondents were required to take several permissions and approvals from various authorities mentioned in the letter of intent dated 19.10.2011. She has pointed out the reasons of delay, viz. acquisition of plot bearing CTS No.148; D.P. Road setback issue; rehabilitation of the mosque; the delay caused by the authorities in granting high rise NOC and revised letter of intent dated 7.6.17 which are referred to above. According to her, these causes were beyond the control of the promoter and therefore they could not complete the project in time.

9. At this stage it is necessary to keep in mind that Maharashtra Ownership of Flat Act, 1963 is in force and Section 88 of RERA permits its application. The agreement for sale has been executed in accordance with the provisions of Maharashtra Ownership of Flat Act. Section 8 of the said Act provides remedy of refund of the allottees' amount on promoter's failure to give possession in time. Its clause (b) provides that if the promoter for reasons

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beyond his control is unable to give possession of the flat by the date specified and a period of 3 months thereafter or a further period of 3 months, if the reasons still exist, then promoter shall be liable on demand to refund the amount already received by him with simple interest @ 9% p.a. from the date he received the same till they are refunded.

10. In view of this provision, I find that even if it is proved by the respondents that they were prevented by the causes which were beyond their control to complete the project in time, they are entitled to get the extension of 6 months at the most and not more than that. **In Neelkamal Realtors Pvt. Ltd. Versus Union of India Writ Petition No.2737 of 2017, Hon'ble Bombay High Court in its Ordinary Original Civil Jurisdiction has held that the promoter having sufficient experience in open market, is expected to have a fair assessment of time required for completing the project. So when the promoter offers any flat for sale and specifies the date of possession, he has to assess all the difficulties which he is likely to face in completing the project. Once he specifies the date to deliver the possession, he is bound by it. However, in order to attract the customers, promoter specifies the earlier date though he knows that he would not complete the construction on the date so specified. This is nothing but the dishonesty of the promoter and he indulges in such unfair practice in order to attract the customers for selling his product and to grab their money at the earliest opportunity. Here, in this case the**



respondents have mentioned that since beginning of the launch of the project they were aware of the fact that various NOCs, permissions and approvals were required and the problems they were likely to face. Despite these facts, they have executed agreement for sale with the complainant in July 2013 and promised to deliver the possession by end of May 2015. Therefore, I find it difficult to hold that respondents have been prevented by the causes which were beyond their control, to complete the project in time. The pleadings of the respondents further demonstrate that they have not acted vigilantly to pursue the matter with the authorities. They cannot take advantage on their own wrongs and reasons assigned by them.

Entitlement of the Complainant.

11. The complainant has filed the statement of his claim marked exhibit- A. The respondents have admitted the receipt of all amount. The respondents are liable to reimburse the amount of registration charges, taxes because the complainant cannot be made to sustain this loss caused due to respondents' failure to complete the project on time. The complainant is entitled to get interest at prescribed rate which is 2% above the SBI's highest MCLR. It is currently 8.5%.

12. The complainant is entitled to get refund of the amount paid by him to the respondents because respondents have failed to deliver the possession of the flat on agreed date. Respondents have defaulted in keeping their promise



and hence they must shoulder liability of repayment. In addition to the above amount, the complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

- A. The respondents shall refund the amount mentioned in payment format marked Exh. 'A' with simple interest @ 10.5% p.a. from the respective dates of their payment till they are refunded to the complainant.
- B. Exh. 'A' shall form the part of this order.
- C. The charge of aforesaid amount shall be on the flat booked by the complainant till they are refunded.
- D. On the satisfaction of the claim, the complainant shall execute the deed of cancellation of agreement for sale in respondents' favour at respondents' cost.

Mumbai
Date: 10.09.2018.

— 10.9.18 —
(B.D. Kapadnis)
(Member & Adjudicating Officer)
MahaRERA, Mumbai

Member

Mr. Haresh Ishwar Manwani

Complaint No. CC006000000043984

Payment Format

Sr. No	Date	Amount	Purpose	Receipt No	Cheque No	Bank Name
1	03/5/2013	4,00,000/-	Consideration Amt	545	567155	Central Bank Of India
2	03/5/2013	2,00,000/-	Consideration Amt	546	000011	Central Bank Of India
3	25/5/2013	7,00,000/-	Consideration Amt	549	567157 026541	Central Bank Of India (4,50,000)+ The Navjeevan Co Op Bank Ltd. (2,50,000)
4	20/6/2013	5,00,000/-	Consideration Amt	553	567599	Central Bank Of India
5	08/7/2013	5,00,000/-	Consideration Amt	570	567804	Central Bank Of India
6	22/07/2013	5,00,000/-	Consideration Amt	575	567811	Central Bank Of India
7	22/07/2013	5,35,600/-	Service Tax + Vat	578	567810	Central Bank Of India
8	02/09/2013	5,00,000/-	Consideration Amt	615	567817	Central Bank Of India
9	02/09/2013	5,00,000/-	Consideration Amt	616	567818	Central Bank Of India
10	24/09/2013	3,00,000/-	Consideration Amt	617	034582	Central Bank Of India
11	24/09/2013	5,00,000/-	Consideration Amt	618	034583	Central Bank Of India
12	02/01/2014	4,50,000/-	Consideration Amt	771	034595	Central Bank Of India
13	02/01/2014	1,96,500/-	Consideration Amt	772	034596	Central Bank Of India
14	19/4/2014	2,68,690/-	Consideration Amt	874	047156	Central Bank Of India
15	04/10/2013	5,00,000/-	Consideration Amt	875	034585	Central Bank Of India
16	04/10/2013	5,00,000/-	Consideration Amt	876	034586	Central Bank Of India
17	03/06/2014	5,00,000/-	Consideration Amt	941	047158	Central Bank Of India
18	23/07/2014	5,00,000/-	Consideration Amt	1049	047162	Central Bank Of India
19	22/09/2014	4,26,149/-	Consideration Amt	1198	019150	Central Bank Of India
20	07/11/2014	1,965/-	TDS	1275		Form 26 AS (TDS)
21	01/11/2014	4,500/-	TDS	1276		Form 26 AS (TDS)

22	07/11/2014	5,000/-	TDS	1277		Form 26 AS (TDS)
23	07/11/2014	5,000/-	TDS	1278		Form 26 AS (TDS)
24	07/11/2014	5,000/-	TDS	1279		Form 26 AS (TDS)
25	07/11/2014	3,000/-	TDS	1280		Form 26 AS (TDS)
26	17/09/2014	5,000/-	TDS	1281		Form 26 AS (TDS)
27	07/11/2014	5,000/-	TDS	1282		Form 26 AS (TDS)
28	07/11/2014	5,000/-	TDS	1284		Form 26 AS (TDS)
29	07/11/2014	5,000/-	TDS	1285		Form 26 AS (TDS)
30	07/11/2014	5,000/-	TDS	1286		Form 26 AS (TDS)
31	08/11/2014	5,000/-	TDS	1294		Form 26 AS (TDS)
32	8/11/2014	2,687/-	TDS	1297		Form 26 AS (TDS)
33	01/12/2014	1,98,000/-	Consideration Amt	1382	019155	Central Bank Of India
34	17/12/2014	5,000/-	TDS	1435		Form 26 AS (TDS)
35	17/12/2014	5,000/-	TDS	1439		Form 26 AS (TDS)
36	23/12/2014	1,98,000/-	Consideration Amt	1448	019159	Central Bank Of India
37	27/12/2014	2,000/-	TDS	1461		Form 26 AS (TDS)
38	27/12/2014	5,000	TDS	1462		Form 26 AS (TDS)
39	29/12/2014	4,95,000	Consideration Amt	1463	019156	Central Bank Of India
40	07/02/2015	2,000 /-	TDS	1582		Form 26 AS (TDS)
41	20/03/2015	1,98,000/-	Consideration Amt	1661	066532	Central Bank Of India
42	25/03/2015	2,000 /-	TDS	1670		Form 26 AS (TDS)
43	07/04/2016	4,95,000/-	Consideration Amt	2055	019803	Central Bank Of India
44	03/05/2016	5,000 /-	TDS	2104		Form 26 AS (TDS)
	TOTAL	1,01,44,091/-				

Abant.
Adv V B Kumbhakar

The above mentioned is fully

H

H. Munnai
Harish Munnai