

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000054960

Heavy Hydraulics India ... Complainant

Versus

Raghuleela Builders Private Limited
MahaRERA Regn. No. P51800005047 ... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by advocates of M/s. Kanga & Company.
Respondent was represented by Mr. M. Shanmugham, Adv. a/w Mr. Vibhav Kushna, Adv.,
(i/b Juris Consillis).

Order

March 11, 2019

1. The Complainant has purchased an office unit bearing no. 802-B in the Respondent's project 'ONE BKC' situated at Bandra, Mumbai through a registered agreement for sale dated July, 2015. The Complainant has alleged that pursuant to the said agreement, the date on which the Respondent was to hand over possession of the said office is long over, but the Respondent has not handed over possession of the said office unit as yet.
2. The Complainant had earlier filed complaint No. CC006000000012222 on the same ground but subsequently on 15th February, 2018 withdrew the complaint with liberty to approach an appropriate forum. In this present complaint, the Complainant has stated that in spite of the Respondent's stand that the apartment no. 802B has part Occupancy Certificate (OC) his request to the Respondent on 23rd February, 2018 to hand over possession along with the plan of the apartment/building has not been

complied with, due to which the possession of the said apartment has still not happened. The Complainant has therefore, reiterated his prayer that the Respondent be directed to hand over possession of the said apartment at the earliest, pay him interest and compensation for the delay under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, the Respondent be restrained from charging assignment charges and GST, cancelling the allotment and creating third party rights.

3. The Learned Counsel for the Respondent submitted that the Part-Occupation Certificate for this Project was obtained on February 9, 2018 much before the said complaint was filed, hence the provisions of Section 18(1) of the Act will not apply. Further, he submitted that the Respondent had by e-mail dated 28th March, 2018, scanned and attached full & final payment statement towards Unit No. 802-B and informed the Complainant that Occupancy Certificate and Possession Letter will be issued by them after receipt of balance payment. Thereafter, there has been several e-mail correspondences between the parties but the dispute regarding balance payments, plans and documents to be handed over, before the possession or after, did not get resolved and therefore the Complainant has refused to take possession of the office unit till date.
4. The learned counsel for the Complainant in his written statement has stated that the Respondent be penalised for violation of various sections of Real Estate (Regulation and Development) Act, 2016 namely Sec 4(2)(c), 4(2)(d), 11(4)(b), 18(1), 18(3) and 19(5).
5. Section 4(2) (c) and 4(2) (d) mandates that the promoter shall disclose to MahaRERA copies of approvals, plans, commencement certificate, layout etc. at the time of registration. It is seen from the webpage of the registered project that the same are uploaded and is available in the public domain. The OC obtained for the project has also been uploaded on the webpage in accordance with Section 11(4) (b). Therefore, we do not find any violation of Sections 4(2)(c), 4(2)(d) or 11(4)(b) of the Act.
6. Section 18 (1)(a) of the said Act reads as:




“ if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. ”

Simple present tense used in the starting line of Section 18 (1) clearly indicates that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision of Section 18(1) of the Act with regard to payment of interest on delay for those allottees who wish to continue in the project or interest and compensation for those who wish to withdraw from the project, ceases to operate.

Though, the learned counsel for the Complainant has stated that the Respondent has violated Section 18 (3) too, he not been able to point out any specific violation of Section 18 (3) apart from the delay in completion which has been dealt with in Section 18 (1).

7. In view of the above facts, the Complainant is advised to take possession of his office unit, as the said office unit has been ready for occupation since March, 2018. In accordance with Section 19(5) of the Act, read with Section 11(4) (b), the Complainant shall be entitled to have necessary documents and plans, including that of common areas, after handing over of the physical possession of his apartment.
8. Consequently, the matter is hereby disposed of.


Gautam Chatterjee
(Chairperson, MahaRERA)