

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

COMPLAINT NO: CC006000000001130

MR. SHAFEEN S. CHARNIA ... Complainant.

Versus

M/s. ORBIT VENTURES DEVELOPERS ... Respondents

MahaRERA Regn: -P51800005666.

Complainants: Mr. Parminder Singh Malhi, Adv. Present

Respondents: Mr. Shirin Khorasi, Advocate present.

COMPLAINT NO: CC006000000001132

Mr. SALIM A. KAMANI ... Complainant.

Versus

M/s. ORBIT VENTURES DEVELOPERS ... Respondents.

(MARVEL BRISA, PUNE)

MahaRERA Regn: -P51800005666.

Appearance.

Complainants: Mr. Parminder Singh Malhi, Adv.

Respondents: Mr. Ramani i/b Ms. Shirin Khorasi, Adv.

Coram: Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.

Common Final Order.

12th February 2018

Pleadings of parties.

The Complainant of Complaint No.1130 Shri Shafeen S. Charnia contend that he booked Flat No.1802 in respondent's registered project known as 'Shika' situated at Andheri (West). The complainant Mr. Salim contends that he booked flat No.2302 in the said project. The total value of flat No.1802 is



Rs.4,30,67,200/- and out of it Rs.3,12,89,700/- have been paid. The total consideration of Flat No.2302 is Rs.4,19,12,400/- and Rs.3,22,49,920/- have been paid to the respondents. The agreements were executed in the year 2011 and the respondents agreed to deliver the possession of the two flats on or before June, 2012. When the respondents failed to deliver the possession of flat No.1802 on the agreed date Mr. Shafeen S. Charnia filed consumer case No.215 of 2014 before the National Consumer Dispute Redressal Commission. The parties arrived at amicable settlement and executed MOU whereby respondents agreed to give the possession of the aforesaid flats by the end of December 2015. Thereafter, supplementary agreements have been executed by complainants and respondents by virtue of it complainants agreed to purchase additional area and the possession was to be given till June, 2016. However, the respondents failed to deliver the possession of the flats on the agreed dates. The complainants want to continue with the project and they claim compensation as was agreed by the respondents in their MOU. In the MOU dated 30.03.2015 the respondents agreed to pay complainants compensation of Rs.5000/- per day for the delay, compensation of mental agony caused to him by respondents on account of delay in constructing and handing over of the possession of the flats. The said compensation was payable by the respondents retrospectively from June, 2012 till handing over the possession of the said flats along with interest @ 12% per annum. The parties have also agreed that the same MOU would also be applicable to the residential flat No.2302. Therefore, the complainants have been claiming compensation and interest under Sec.18 of RERA from the respondents.

2. The respondents have pleaded not guilty in both the cases. According to them Adarsh Co-operative Housing Society granted Development rights to the respondents on 16th August 2007. Municipal Corporation granted commencement certificate on 03.12.2009. The agreements for the sale of the aforesaid flats have been executed in year 2011. Thereafter, Oshiwara Link Shopping CHS granted development rights to the respondents on 17.04.2014 with respect to Oshiwara shopping plot. They agreed that they executed MOU on the basis of which the complaint filed before National Consumer Dispute Redressal

Forum had been withdrawn. They admit that they agreed to hand over the possession of the flats by the end of December, 2015. However, complainants executed supplementary agreements for purchasing additional areas in which respondents agreed to deliver possession by the end of June, 2016. It is the contention of the respondents that Airport Authority granted permission to make the construction up to 129.64 metres within 5 years. This permission was granted on 26.11.2008. However, by its letter dated 07th October 2014 Airport Authority reduced the height of the building to 122.59 metres. The respondents filed appeal against the said order which has been allowed by Appellate Authority on 7.9.2017. It permitted to make the construction of a building having the height to 131 metres. Thereafter, on 12th October 2017, the Municipal Corporation granted full commencement certificate to construct 33 floors. The respondents further contend that in D.P. Plan 2034 two D.P. roads of 7.62 metres wide were shown passing through the plot. They had to take up the matter to the Govt. of Maharashtra which ultimately deleted those two roads on 28.4.15 but Authorities deleted only one road. Hence, the matter was again taken to the Chief Engineer, Development Plan of the Corporation who corrected it in the year 2016.

3. The respondents further contend that the environmental clearance is required if the constructed area of the building exceeds 20,000 sq. mtrs. The Environment Department directed the respondents to develop adjoining plot to aggregate the areas. Therefore, the respondents filed application for environmental clearance on 17.4.14 by doing the same and got the clearance on 08.12.2014.

4. Oshiwara Link Shopping CHS granted development rights to the respondents with respect to adjoining plot on 17.4.2014 and the complainants gave their consent for amalgamation of the plots on 06.10.2015. Therefore, the respondents contend that these causes caused delay which were beyond their control and hence they request to dismiss the complaint.

5. I have heard learned advocates of the parties. Following points arise for determination. I record my findings thereon as under: -

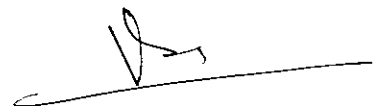


| Points. | Findings. |
|---|------------------|
| 1. Whether the respondents have failed to deliver the possession of the flats on the agreed date? | Affirmative. |
| 2. Whether the respondents prove that reasons causing delay for completing the project were beyond their control? | Negative. |
| 3. Whether the complainants are entitled to get interest on their investment for every month of delay till they get the possession of their flat? | Affirmative. |
| 4. Whether the complaints are entitled to get compensation @Rs.5000/- per day with retrospective effect? | Negative. |

REASONS.

Delayed Possession.

6. There is no dispute between the parties that the respondents agreed to deliver the possession of Flat No.1802 and Flat No.2302 on or before June, 2012 and Consumer Complaint No.215 of 2014 was filed before the National Consumer Dispute Redressal Commission, New Delhi, on the basis of Memorandum of Understanding made by Mr. Shafeen S. Charnia and the respondents on 20.03.2015, respondents agreed to deliver the possession of the two flats on or before December 2015. It is also not in dispute that supplementary agreements have been executed by respondents in favour of complainants whereby the agreed date is extended to June,2016 and that till the date of complaints they have not handed over the possession of the flats to the complainants. Therefore, I hold that the respondents have failed to deliver the possession of the flats on the agreed dates.



Reasons of Delay.

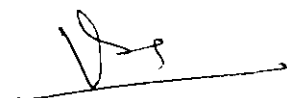
7. Both the complainants have entered into the supplementary agreements on 06.10.2015 with the respondents whereby they agreed to purchase the additional areas of 68.86 sq. mtrs. In these agreements respondents have specified that they shall hand over the possession of the flats on or before 30th June 2016. When they agreed to deliver the possession of the flats on this date all the incidents which occurred prior thereto were within their knowledge. Therefore, the reasons which occurred before execution of the supplementary agreements dated 6.10.2015 do not have any relevance. In view of this fact, I am not convinced that the project was delayed because of the two development roads were shown passing through the project plot and their subsequent cancellation. Similarly, the matter which was lying before Airport Authority was also within their knowledge when they agreed to deliver the possession of the flats on 30th June 2016. Hence, I find that the respondents cannot take somersault to contend that they were prevented by the causes which were beyond their control.

Entitlement of the Complainants.

8. Mr. Salim produced the payment schedule marked *Exhibit 'A'* showing that he has paid Rs.3,80,63,420/- in respect of Flat No.2302 whereas Mr. Shaifeen has filed the payment schedule marked *Exhibit 'A'* to show that he paid Rs.3,70,69,750/- in respect of flat No.1802. Receipt of these payments are not disputed.

9. Section 18 of RERA provides that if the promoter fails to give possession of an apartment on the specified date mentioned in the agreement for sale, when the allottee does not intend to withdraw from the project, the promoter is liable to pay the allottee, interest for every month of delay at the prescribed rate till handing over the possession. In these complaints, both the complainants want to continue in the project, therefore now they are entitled to get the interest on their amount for every month of delay.

10 The delay starts from the respondents' default in handing over the possession on the agreed date, i.e. from 1st July 2016. The complainants have

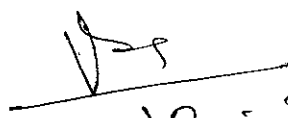


relied upon MOU dated 30th March 2015 wherein it is contended that in the event of respondents' failure to hand over the possession of flats within the stipulated time (December 2015 as agreed therein), the respondents undertook to pay complainants compensation of Rs.5000/- per day for delaying possession, mental agony which shall be paid retrospectively along with the interest @12 p.a. from the date of default, i.e. from June, 2012. However, the complainants are not entitled to get compensation as per this MOU because subsequently the supplementary agreements for sale have been executed by them wherein the revised agreed date for giving possession is mentioned as 30th June 2016.

11. Complainants therefore are entitled to get the interest at the prescribed rate which is of State Bank of India's highest marginal cost of lending rate, which is currently 8.05% + 2%. This interest is compensatory in nature. Hence, I do not find it necessary to award compensation separately because the ends of justice will be served if the interest at the prescribed rate is awarded from the date of default i.e. 1.7.2016. However, the complainants are entitled to get Rs. 20,000/- towards the cost of their complaint. Hence, following order.

ORDER.

1. Respondents shall pay the complainants monthly interest @ 10.05% on their investments mentioned in para 8 of this order from 01.07.2016 till handing over the possession of their flats.
2. The respondents shall pay each complainant Rs. 20,000/- towards the cost of their complaints.


12.2.18

(B.D. KAPADNIS)

Mumbai

Date: 12.02.2018

Member & Adjudicating Officer,

MahaRERA, Mumbai.