

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

COMPLAINT NO: CC006000000056819.

Turab Fidvi

... Complainant.

Versus

Kohinoor Developers
(Kohinoor City)

... Respondents.

MahaRERA Regn: P51800003258.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: In person.

Respondents: Mr. Akshay Bidaye, Manager.

FINAL ORDER

31st January 2019.

The Complainant complains that the respondents agreed to deliver the possession of his booked flat no. 12B071 residential phase-II, block 2 of respondents' project 'Kohinoor City' Mumbai, situated at Kurla (West) on 31.12.2016 but they failed to do so. He wants to continue in the project but claims interest on his investment for every month of delay under Section 18 of RERA. The complainant further complains that even after receiving 90% of total consideration the respondents have failed to execute the registered agreement for sale and thereby contravened section 13 of the Real Estate (Regulation and Development) Act, 2016 (RERA).


2. The respondents have filed an application for rejection of the complaint by contending that section 12 of the Act is not attracted. They have shown readiness to execute the agreement for sale. The application has been rejected by the order dated 03.01.2019 holding that section 13 and 18 of the Act are



attracted in the matter. The respondents deny that they agreed to hand over the possession of the flat on 31.12.2016. According to them the agreement for sale had not been executed to ascertain the agreed date. In fact, as per condition 6 of the allotment letter dated 25.11.2013 the complainant was required to execute and registered agreement for sale within two months from the date of allotment letter. They deny their liability by contending that the email relied upon by the complainant for the date of possession was sent by their employee Ms Archana Dhawale by mistake. It is mentioned in the email, "as mentioned in the agreement, possession will be given on or before 31.12.2016". In this case no agreement is executed in complainant's favour. The respondents contend in their reply that the project is being constructed on the huge layout. They contend that they could not complete the project in time because they had to encounter a hard rock, they have to change the design of the basement because of huge pipe and face problems of water logging and land slide also in heavy monsoon. The tower crane collapsed and there was shortage of building material. The DCR - 34 has been modified and the guidelines have also been issued late. They have received only Rs. 1,25,00,000/- from the complainant excluding taxes and other charges. According to them, if they would be required to pay interest on such huge amount, their project will be affected. Hence, they request to dismiss the complaint.

3. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether the respondents have agreed to deliver the possession of the flat on or before 31.12.2016?	Affirmative.
2. Whether the respondents have failed to deliver the possession of the flat on agreed date?	Affirmative.
3. Whether the complainant is entitled to get interest on his amount for delayed possession?	Affirmative.



REASONS

Maintainability of the complaint under Section 18 of RERA:

4. Relevant part of section 18 of RERA reads as under-

'18. Return of amount and compensation-

(1) 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;'

(b) *****

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".

On the plain reading of this provision it becomes clear that on promoter's failure-

- i) to complete an apartment in accordance with the terms of the agreement for sale or
- ii) to give possession of an apartment on the date specified in the agreement for handing over the possession of such an apartment,



the allottee who does not intend to withdraw from the project, gets right to claim interest at prescribed rate on his investment for every month of delay till the promoter hands over the possession of his apartment or completes it as the case may be. This right accrues from the date of default till the allottee gets the possession of the flat. He cannot be deprived of his accrued legal right only because it will add financial burden on the promoter. With this backdrop now I shall deal with the factual aspect of the matter.

5. The complainant has produced the copy of the allotment letter which shows all the stipulations necessary for the agreement for sale except the date of possession. The respondents have accepted almost 87% amount of total consideration of the flat against the allotment letter. The allotment letter coupled with the acceptance of 87% of the total consideration of the flat amounts to the agreement for sale because section 2(c) of RERA defines " agreement for sale" means an agreement entered into between the promoter and the allottee. There can be oral agreement for sale of immovable property. Fortunately, in this case the allotment letter issued by the respondents is sufficient to show that the parties agreed the same thing in same sense namely, the respondents agreed to sell the flat for the consideration mentioned in the allotment letter and the complainant agreed to purchase it for the same price coupled with the payment of Rs. 1,25,62,634/- reflected in the payment schedule marked Exh. A , the receipt of which is not disputed by the respondents. Therefore, I hold that there is agreement for sale entered into between the parties.

6. Now the next issue is that of the agreed date of possession. The complainant relies upon the respondents' email dated 8.04.2014 addressed to them informing that the possession of flat no. 12 B071 will be given on or before December 2016. These contents therefore, are sufficient to indicate that the



respondents kept the complainant informed that the possession of the said flat would be given on or before December 2016. In view of these contents of the letter I do not agree with Mr. Bidaye when he submits that the letter is wrongly sent to the complainant. This letter therefore, establishes the fact that the respondents agreed to hand over the possession of the flat on or before December 2016. However, the respondents have not handed over the possession till the date. I record my finding to this effect.

7. The complainant has made payment of Rs. 1,25,62,634/- towards the consideration of the flat before agreed date of possession, hence, the complainant is entitled to get simple interest at prescribed rate from the date of default i.e. from 01.01.2017 till getting the possession of the flat. The prescribed rate of interest is, 2 % above SBI's highest MCLR which is currently 8.55% per annum.

8. The transaction has taken place during the year 2012 to 2016 when Maharashtra Ownership Flats Act was holding the field. Section 4 thereof prohibits the promoter from accepting more than 20% of the total consideration without first entering into a registered agreement of sale. RERA has come into force w.e.f. 01.05.2017 and section 13 thereof prohibits the promoter from accepting more than 10% of the total consideration without first entering into a registered agreement of sale. Allotment letter shows that the total consideration of the flat is Rs. 1,44,05,716/-. The complainant has paid Rs. 1,25,62,634/- which is obviously more than 20% and 10% of the total consideration, prescribed by the two laws. It was the duty of the respondents to execute the registered agreement for sale in complainant's favour before accepting more consideration than the prescribed limit. The respondents have violated section 13 of the Act. Hence, it is necessary to direct them to execute the registered agreement for sale of the flat in complainant's favour by incorporating the conditions inconsonance with the terms and conditions of the allotment letter and with the provisions of RERA. They shall mention the earlier date of



possession, 31.12.2016 in the agreement. The parties are at liberty to mutually agree on the next date of possession. It is necessary to impose the penalty u/s 61 of the Act on the promoter to the extent of Rs. 1,00,000/- for contravening section 13 of RERA.

6. The respondents are liable to pay Rs. 25,000/- to the Complainant towards the cost of the complaint. Hence the order.

ORDER

The respondents shall pay the Complainant simple interest at the rate of 10.55% per annum on his investment Rs. 1,25,62,634/- from 01.01.2017 till handing over the possession of the flat, for every month of default.

The respondents shall execute the registered agreement for sale of the flat in complainant's favour by incorporating the conditions in consonance with the terms and conditions of the allotment letter and with the provisions of RERA within a month from this order. They shall mention the earlier date of possession, 31.12.2016 in the agreement. The parties are at liberty to mutually agree on the next date of possession.


The complainant shall bear the stamp duty and registration charges.

The respondents shall pay Rs. 1,00,000/- towards the penalty u/s 61 for contravening section 13 of RERA.

The respondents shall pay Rs. 25,000/- to the Complainant towards the cost of the complaint.

Mumbai.

Date: 31.01.2019.


31.1.19
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

* corrected 9335 of
RERA
5-1-19.