

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No: CC0030000000000007

Sheetal Rajkumar Gangwal

Mahavir Sunderlal Pande

Sujata Mahavir Pande

... Complainants.

Versus

Ms Sunder Siddhi

Ms Sunder Villa

Ms Sunder Sports Plante

Ms Sunder Sports Plante

M S Sunder Heritage

... Respondents.

Complaint No: CC0030000000000008

Mr. Swadesh Rajendra Pande

... Complainant.

Versus

Ms Sunder Siddhi

Ms Sunder Villa

Ms Sunder Sports Plante

Ms Sunder Sports Plante

M S Sunder Heritage

... Respondents.

MahaRERA Regn: P51500011267

Coram: Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.


Complainants: ADV. Mr. A.A. Mamidwar.

Respondents: Adv. Mr. N.P. Runwal.

Common Final Order

Date: 30th December 2017

The complainants have filed these complaints under Section 18 of Real Estate (Regulation and Development) Act, 2016 (In short, RERA) for




getting refund of their amount with interest on the Respondents' failure to deliver the possession of their booked flats on agreed date.

2. Mr. Sheetal R. Gangwal entered into agreement for sale on 30th June 2012, to purchase a flat No. 501, K wing situated in respondents' Shamit Afto Zone, Nakshatrawadi, Paithan Road, Tal. & Dist. Aurangabad. Mr. Swadesh Pandey also entered into an agreement with the respondents to purchase a flat no. 601 of K-Wing in respondents' same Shamit Afto Zone project. His agreement is of 28th March 2012. The respondents agreed to give possession of the said flats within 18 months from the agreements.

3. The complainants complain that the respondents have failed to deliver the possession of their flats on the agreed dates. They waited till the date of complaints but they do not get the possession. Hence they have filed the complaints.

4. The respondents have filed their reply wherein they have admitted that the complainants have booked the above numbered flats in their project. They contend that the agreements for sale have been executed when RERA was not in force and therefore, this Authority does not get jurisdiction. According to them, they could not complete the project in time because of scarcity of water during the period from 2013 to 2016. The Maharashtra Pollution Control Board asked them to stop the work by their letter dated 27.12.2013, though the respondents applied for their permission on 23.11.2011 itself. Maharashtra Pollution Control Board granted the permission by their letter dated 29.03.2014. Thereafter they received the stop work letter dated 08.06.2014 from the Environmental Clearance Authority though they applied for it on 23.11.2011. Ultimately, they got Environmental Clearance on 16.01.2016. Therefore, the respondents contend that they could not carry on the construction because of the stop-work orders issued by above named two authorities. They deny that they agreed to deliver the possession within 18 months from the date of agreements for sale executed in favour of the complainants. According to them, they have received only Rs. 15,57,160/- from Mr. Pandey and Rs. 18,33,000/- from Mr. Gangawal. They also agreed to pay compensation of Rs. 6,000/- per month to the complainants from October 2013 to August 2017 on account of the delay and it was to be adjusted against the total amount due from the complainants. They further contend that they have applied for obtaining completion certificate on 01.11.2017 and the certificate is awaited. Therefore, they request to dismiss the complaints.



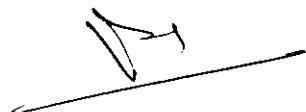
5. Following points arise for consideration and I record findings thereon as under:

POINTS	FINDINGS
1. Whether the MahaRERA has jurisdiction to adjudicate upon these complaints?	Affirmative
2. Whether the respondents agreed to deliver the possession of the booked flats within 18 months from the date of agreements for sale?	Affirmative
3. Whether the respondents have failed to deliver the possession of the complainants' booked flats on the agreed dates?	Affirmative.
4. Whether the respondents prove that they were prevented from completing the project within time due to the reasons which were beyond their control?	Negative.
5. Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

REASONS:

Jurisdiction.

6. The respondents have taken the plea that the MahaRERA has no jurisdiction to adjudicate upon these complaints because agreements for sale had been executed before RERA came into force. I do not find any force in this submission because the cause of action to claim possession is recurring cause of action. Admittedly, till the date of the complaints the possession of the booked flats has not been given to the complainants. The respondents have registered their project with MahaRERA as on-going project. It brings with it the legacy of the rights and liabilities of the parties connected thereto. Section 18 of RERA entitles the allottee to claim his amount with interest and/or compensation also, when the promoter fails to deliver possession of a flat on the agreed date. The Bombay High Court has held in Nilkamal Realtors Suburban Pvt. Ltd. - v/s - Union of India - Writ Petition No. 2737 of 2017 filed under the Ordinary Civil Jurisdiction that Section 18 of RERA is retroactive though the Act is prospective. Therefore, I find that though the agreements had been executed before RERA came into force, MahaRERA gets jurisdiction to adjudicate upon these complaints.



Respondents' default to deliver possession on agreed date.

7. The respondents have denied that they agreed to deliver the possession within 18 months of the agreement. However, the complainants have produced the agreements executed in favour of Swadesh Pandey on 28th March 2012. Its Para-11 shows that the respondents have agreed to give the possession within 18 months from the date of execution of agreement. Similar, provision is there in the agreement executed in favour of Mr. Gangawal dated 30th June 2012. It means that the respondents were liable to deliver the possession of flats booked by Mr. Pandey on or before 28th September 2013 and flat booked by Mr. Gangawal was to be delivered on or before 30.12.2013. Respondents have not disputed the fact that they have not delivered the possession of flats to complainants till the date of complaint. These facts have been proved by the complainants.

Reasons of delay.

8. The respondents have contended that they could not complete the project in time because there was scarcity of the water during the period from 2013 to 2016. They have relied upon the clause-11 of the agreements for sale. On perusal of the said clause, I find that the parties have agreed that the non-availability of water shall be one of the causes for extension of time. The respondents have also relied upon the public interest litigations decided by the Hon'ble Bombay High Court Bench, Aurangabad and certain other documents issued by the Government to prove that there was scarcity of water in Marathwada Region during this period. The respondents have also produced the documentary proof to prove that though, they have applied for the sanction of Maharashtra Pollution Control Board on 23.11.2011, the Board issued a letter on 23.12.2013 to stop the work and finally granted the permission on 29.03.2014. They have also placed on record that though they applied for Environmental Clearance on 23.11.2011, the authority issued a letter dated 08.06.2014 to stop the work and finally gave the Environmental clearance on 16.01.2016. Though the respondents have established these facts, I find that they are not entitled to get the benefit thereof for the simple reason, that the respondents were contractually under the obligation to deliver the flat to Mr. Pandey on or before 28th September 2013 and to Mr. Gangawal on or before 30th December 2013. All the above developments had taken place after those dates and therefore, they shall



not help the respondents from absolving them from paying interest to complainants. However, I have taken into consideration to deny the compensation claimed by the complainants as mitigating circumstances.

Exercise of complainants' legal right to withdraw from the project.

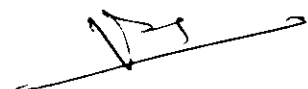
9. The Section 18 of RERA gives an option to an allottee to withdraw from the project and demand for refund of his amount with interest and/or compensation on the promoter's failure to deliver the possession of a flat on the agreed date mentioned in the agreement for sale. Here, the respondents have contended that the building is completed and they have also applied to the local authority for issuance of completion certificate. I find that this Authority has no authority to compel the complainants to continue in the project. It is the legal right of the allottees to decide to continue in the project or to withdraw from it. Complainants have exercised their legal right to withdraw from the project. Therefore, I have to adjudicate upon these matters in the light and spirit of Section 18 of RERA.

Complainants' entitlement.

10. Mr. Sheetal Gangawal has filed the statement showing that he paid Rs. 51,000/- on 01.04.2011, Rs. 2,49,100/- on 27.06.2012, Rs.3,80,200/- on 29.06.2012, Rs. 10,00,000/- on 08.08.2012, Rs. 2,00,000/- on 02.02.2013 and Rs. 1,00,000/- on 21.12.2013. He has paid Rs. 01,29,360/- towards stamp duty and Rs. 22,540/- towards registration charges on 30.06.2012. Mr. Gangawal is entitled to get these amount that from the respondents. He cannot be made to suffer the losses of stamp duty and registration fee because of the default committed by respondents in handing over the possession in time.

11. Mr. Pande has simply filed the statement of Axis Bank but he has not filed any statement showing that he paid Rs.16,69,050/-. He has filed a letter of the respondent dated 16.11.16 which shows that by the said date the respondent received Rs.15,57,160/- from Mr. Pande. Hence, I hold that Mr. Pande is entitled to get back this amount from the respondents.

12. The respondents have made attempt to show that they offered Rs 6,000/- per month as rent because of delayed possession and it was to be adjusted against the final amount due from the complainants, however, it appears that the parties have not acted upon it. The complainants are entitled to get the interest at the prescribed rate under section 18 of RERA on the amount paid to the respondents from the date of their respective



payments. The rules framed under the RERA, prescribed the interest at the rate of MCLR of SBI which is currently 8.05 % + 2%. Thus, the complainants are entitled to get interest on their amount at this rate from the date of their payments to the respondents. Each complainant is entitled to get Rs. 20,000/- towards cost of their complaints. Hence, the order.

ORDER

1. The respondents shall refund the amount mentioned in Para 10 to Mr. Sheetal Gangawal and in Para11 of this order to Mr. Swadesh Pandey.
2. The respondents shall pay the interest on the said amount at the rate of 10.05 % from the dates of their receipt till they are repaid.
3. The respondents shall pay Rs. 20,000/- to each complainant towards the cost of his complaint.
4. The charge of the aforesaid amount shall be on the flats booked by the complainants till the satisfaction of the complainants' claims.
5. On satisfaction of their claims, the complainants shall execute the deeds of cancellation of agreements in favour of respondents at respondents' cost.

Mumbai.

Date: 30.12.2017



(B.D. Kapadnis)

Member & Adjudicating Officer,
MahaRERA, Mumbai.