

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO. CC006000000044237

Ratneshwar Balbhadra Jha ... Complainant.

VERSUS

Vidhi Realtos ... Respondents.

MahaRERA Regn: - P 51800007949

Coram ... Shri B.D. Kapadnis

Hon'ble Member & Adjudicating Officer

Appearance:

Complainant: In person.

Respondent: Adv.Mr. Krishna Agarwal

Final Order

24th August 2018

The complainant contends that he booked flat No.201, B Wing in respondents' registered project "Gaurav Discovery" situated at new Mahakali Road, Malad (West). The respondents agreed to hand over possession on or before 31st December 2017 but they failed to do so. The complainant wants to continue in the project and claims interest on his investment of Rs.43 lakhs for every month of delay till handing over the possession of the said flat.

2. The respondents have pleaded not guilty. They have filed the reply to contend that they agreed to sell the flat for the total consideration of Rs.48,93,280.00 as mentioned in the agreement for sale dated 29th November



2016. They have agreed to hand over the possession till December 2017. They did not receive the permission on time. They received only Rs.33,41,810/- from the complainant. The complainant defaulted in paying the instalments which became due and now Rs.8,77,171/- are due from him.

3. Following points arise for my determination. I record my findings thereon as under-

Points	Findings
1. Whether the respondents have failed to hand over the possession of the booked flat on agreed date?	Affirmative.
2. Whether the complainant has paid the respondent Rs. 43 lakhs towards consideration of the flat?	Only Rs. 33,41,810/-
3. Whether Rs. Rs.8,77,171/- are due from complainant?	only Rs.3,28,150/-

Reasons

4. The respondents themselves have admitted that they agreed to hand over the possession of the flat by December 2017 (wrongly typed as 2015) but they could not deliver it because they did not receive the necessary permissions on time. In view of this fact, I hold that the complainant has proved that the respondents have failed to deliver the possession on agreed date.

5. Section 18 of RERA provides that on failure of the promoter to complete or to give possession of apartment in accordance with the terms of agreement for sale or duly completed by the date specified therein, the



allottee who does not intend to withdraw from the project shall be paid interest at the prescribed rate on his investment for every month of delay till handing over the possession.

6. The respondents state that they have received only Rs.33,41,810/- and the complainant in his affidavit mentions that he paid Rs. 43 lakhs to the respondents. Therefore, it is necessary to deal with this issue in detail. There is no dispute between the parties that initially the complainant booked Flat No.202 in G Wing, Building No.2 of "Gaurav Discovery" admeasuring 640 sq.ft. at the rate of Rs.8200/- per sq.ft. It was not completed in time therefore both the parties came to a settlement whereby the complainant booked flat No. 201, B Wing admeasuring Rs.680 sq.ft. @ Rs.8750/- per sq.ft. Its total cost is Rs. 59,50,000/-. Money paid by the complainant for Flat No.202 of G Wing has been adjusted against the booked of Flat No. 201 of B Wing.

7. The real dispute between the parties is, according to the complainant he paid Rs.10,56,720/- in cash in two instalments. The respondents deny its receipt. Therefore, it is necessary to ascertain from the evidence laid by the parties whether the complainant really paid Rs.10,56,720/- in cash or not.

8. In order to support his contention the complainant relies upon the booking form of Flat No.202 of G Wing. It is clearly mentioned therein that this flat of 680 sq.ft was booked by the complainant @ Rs. 8,075/- per sq.ft. for total cost of Rs.59,50,000/- and this form bears the signature of General Manager (Sales) of the respondents. Then the complainant relies upon agreement for sale in which the total value of Flat No.201, B Wing is shown as Rs.48,93,280/-, it is less by Rs.10,56,720/-. The complainant submits that this documentary evidence is sufficient to show that in the agreement for sale this amount was shown less because it was paid in cash and received by the



respondents. This submission appears to be logical because no promoter would reduce the total value of the flat to such an extent. This is one aspect of the matter.

9. Now I shall consider another aspect of the matter. The agreement for sale has been executed by both the parties. The agreement means to agree on the same thing in the same sense. Both the parties while executing the agreement for sale in one voice contended that the total value of the flat would be Rs.48,93,280/- and they paid the stamp duty to the govt. on this amount only. It appears that the real cost of flat is concealed by both the parties for saving the amount of stamp duty and thereby they played fraud on the govt. Moreover, the agreement for sale is executed later in point of time. As per the provisions of Section 91 and 92 of the evidence Act, the complainant is precluded from disputing the contents of the agreement of sale. The complainant is a practising Advocate at criminal side. He would not have parted with such huge amount without obtaining receipt. Hence for all practical purposes, I hold that the agreed price of flat is Rs.48,93,280/- which is mentioned in the agreement for sale. To conclude, I hold that the complainant has failed to prove the payment of Rs.10,56,720/- in cash.

10. The complainant has filed the payment format Marked Exhibit A. The complainant wants to continue in the project and therefore, he is entitled to get interest only on the amount of consideration. He is not entitled to claim interest on the amount paid towards taxes. I have verified from the receipts produced by the complainant which have not been disputed by the respondents that the complainant made following payments towards the consideration of the flat.



Date	Payment (Amount in Rupees)
01.05.2013	3,00,000
01.05.2013	2,00,000
31.05.2013	2,70,000
31.05.2013	30,000
08.07.2013	1,00,000
08.07.2013	2,00,000
09.07.2013	1,00,000
21/08/2013	1,20,000
15/02/2017	17,62,500
14/06/2017	50,000
27/06/2017	50,000
Total	31,82,500/-

11. However, the respondents admit that they have received Rs. 33,41,810/- from the complainant. Therefore, he is entitled to get the interest at prescribed rate which 2% above State Bank of India's MCLR which is currently 8.5% from the date of respondents' default, i.e. from 1st January 2018 on this amount for every month of default till handing over the possession of the flat to the complainant. Complainant is also entitled to recover Rs. 20,000/- from the respondents towards the cost of the complaint.

12. The respondents have been claiming Rs. 8,77,171/- from the complainant by contending that he defaulted in paying instalments and he is liable to pay the same with 10% interest till 1st August 2018. The agreement for sale shows that the complainant was liable to pay Rs. 36,69,960/- on the execution of the agreement and thereafter he was liable to pay the balance by

instalments starting from casting of 17th slab. The respondents have produced the statement showing the arrears. It does not show that 17th slab has been cast. So I hold that till casting 17th slab the complainant is liable to pay the respondents Rs. 36,69,960/- only and he paid Rs. 33,41,810/-. Therefore, Rs. 3,28,150/- are due from the complainant from the date of the agreement for sale i.e. from 29.11.2017. The respondents are entitled to recover the same with prescribed rate of interest under Section 19(7) of RERA. Hence, the following order.

ORDER


The respondents shall pay the complainant simple interest at the rate 8.5% p.a. on complainant's investment of Rs. 33,41,810/ from 1st January 2018 for every month of default till handing over the possession of the flat.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of complaint.

Complainant shall pay the respondents Rs. 3,28,150/- with simple interest at the rate 10.5% p.a. from the date of the agreement for sale i.e. from 29.11.2017.

Mumbai.

24th August 2018



24-8-18

Shri B.D. Kapadnis
Member & Adjudicating Officer
MahaRERA, Mumbai.