

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

COMPLAINT NO: CC006000000012761

Naresh Bohra

... Complainant.

**Versus**

1. M/s Radius and Deserve Builder LLP. ... Respondents.
2. Chief Executive Officer of  
Slum Rehabilitation Authority.  
(Anantya 1A)

MahaRERA Regn: P51800005533

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

**Appearance:**

Complainant: Adv. Nilesh Gala.

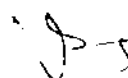
Respondent No.1: Adv. Pooja Parekh.

Respondent No.2: Exparte.

**FINAL ORDER**

**25<sup>th</sup> February 2019.**

The complainant contends that he booked flat no. T-5-702 of Anantya 1A building situated at Village Wadhavali, Taluka Kurla, Mumbai. He complains that the respondents failed to execute and register the agreement for sale of the said flat even after receiving more than 10% of the total consideration of the flat and thereby contravened Section 13 of RERA. The respondent no. 1 have failed to form the society/association of the allottees, though more than 51% of the flats in the project are booked and thereby they have contravened Section 11 (1) (e ) of RERA. The complainant complains that at the time of booking of the flat respondents represented him through the advertisement that the possession of the flat would be handed over on or before December 2020. However, the said

  
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statement has proved false because the respondents while registering the project with MahaRERA revised the proposed date of completion to 31<sup>st</sup> December 2024. Hence, he withdraws from the project and claims refund of his amount with interest and compensation under Section 12 of RERA. Complainant alleges that the respondent no. 1 contravened Section 14 of RERA by incorporating Clause A (a) in their draft agreement seeking blanket consent of the allottees for additions and alterations in the sanctioned plan/layout plan and specifications of the buildings or common areas without the previous written consent of at least 2/3 of the allottees.

2/- Respondent No.1 have pleaded not guilty. They have filed their reply to contend that the complainant himself terminated the booking by sending email dated 26.04.2017 because of his financial difficulties. He has not withdrawn the termination letter and therefore, the complaint is not maintainable. So far as the complainant's prayer for execution of agreement for sale with possession date of 31.12.2020 is concerned, the respondents submit that no such date was agreed upon by the parties when the complainant booked the flat. The application form does not have any reference to the date of possession as 31.12.2020. The respondents while registering the project with MahaRERA have declared that they shall complete the project on 31.12.2024 and therefore, this Authority cannot re-write the agreement and prepone the date of possession. The respondents further contend that though the complainant did not withdraw the letter of cancellation of booking by way of good gesture, they sent email dated 28.09.2017 to call upon him to make payment of stamp duty and registration charges and to execute and register the agreement for sale with date of possession as 31.12.2024 but the complainant has not come forward for execution of an agreement. The terms and conditions of the application form indicate that the respondents are entitled to deduct 10% of the amount on cancellation of the booking. They further contend that since the

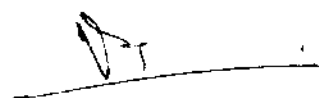


complainant is withdrawing from the project, he has no locus standi to make grievance of non-registration of the society. They deny their liability to pay Rs. 1,00,000/- towards the compensation for mental trauma and therefore, they request to dismiss the complaint.

3. The respondents no. 2 has not appeared.

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

POINTS	FINDINGS
1. Whether the respondent No.1 made false or incorrect statement in their advertisement that the possession would be handed over before December 2020 and the complainant sustained loss or damage because of such false or incorrect representation?	Affirmative.
2. Whether the respondent No.1 have failed to execute the agreement for sale even after the receipt of more than 10% of the total consideration and thereby contravened section 13?	Affirmative.
3. Whether the respondent No.1 have contravened section 11(1) (e) of RERA by not forming the society or association of the allottees even after booking of more than 50% of the flats?	Affirmative.
4. Whether the respondents have contravened section 14 by incorporating clause A(a) in their draft agreement seeking blanket consent of the allottees for additions and alternation in the sanctioned plan, layout plan and specifications of the building or common area without the previous written consent of at least 2/3 of the allottees?	Affirmative.
5. Whether respondent no.1 are liable to refund complainant's amount with interest and compensation?	Affirmative.



## REASONS

5. There is no dispute between the parties that the complainant booked the flat T-5-702 in 'Anantya 1A' building of the respondents' project for Rs. 1,78,80,450/- as is seen from the application form dated 27.04.2016. The respondents have admitted that the complainant has paid them Rs. 37,56,538/- towards the consideration which aggregates to 19.9% of the total consideration. Since the flat has been booked in the year 2016, the promoter was entitled to receive the consideration amount to the extent of 19.9% without the written agreement as per Section 4(1) of MOFA. The written agreement for sale was necessary for receiving the consideration of more than 20%. However, on 01.05.2017 RERA has come into force and the project is registered with MahaRERA. It has brought legacy of rights and obligations of the parties along with it. The promoter is not entitled to receive the sum more than 10% of the cost of the apartment without first entering into written agreement for sale and registering it as per section 13 of RERA. Therefore, after 01.05.2017, it is the responsibility of the respondent no.1 to execute and register the agreement for sale in complainant's favour under Section 13 but till the date of the complaint, the respondent no. 1 have failed to execute it.

6. The respondents have brought to my notice that the complainant by his email dated 26.04.2017 cancelled the booking and according to them, this letter is not withdrawn by the complainant. It is a matter of fact that even after receiving the letter of cancellation, the respondents have not refunded the complainant's amount. This clearly shows that they have not accepted the complainant's request for cancellation of the booking. On the contrary, the respondent no. 1 have by their email dated 28.09.2017 called upon the complainant to make the payment of stamp duty and registration charges to register the agreement. Therefore, the contractual obligation

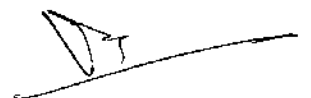


continues even after 26.04.2017 for the execution and registration of agreement for sale. Hence the complaint is maintainable.

7. The real issue is, the complainant wants that the agreement should contain the date of possession as 31.12.2020 whereas the respondent no. 1 want to put 31.12.2024 in it and therefore, the agreement has not been executed.

8. Now, this discussion takes me to the respondents' advertisement advertised on their official website which shows that the respondent no. 1 mentioned the date of possession as January 2019. The complainant has produced the advertisement of the project appearing on other websites showing that the possession is to be given in the year 2020. Even after it is taken for granted that the advertisement appearing on other websites are not authorised by the respondent no. 1, I believe the complainant because the respondent no.1 themselves mentioned on their webpage while registering the project with MahaRERA that the proposed date of completion of the project was 31.12.2020. The respondent no. 1 cannot take somersault and deny this date. It is also fact that now the respondent no.1 do not want to adhere to this date of possession but they have revised it to 31.12.2024 which has not been accepted by the complainant. These facts are more than sufficient to hold that the respondent no. 1 made the false statement or incorrect statement in the advertisement at the time of booking that the project would be completed by 31.12.2020. The complainant has made the payment by believing in the respondents' representation and hence, he is entitled to claim refund of his amount with interest and/or compensation under Section 12 when the respondents are not ready to hand over the possession on 31.12.2020 as projected by them.

9. After 01.05.2017, as per the provisions of Section 13 of RERA, the respondents were liable to execute and register the agreement for sale as more than 10% of total consideration was already received by them. They have failed to execute the agreement till the date of complaint and hence, I



hold that the respondent no. 1 are guilty of contravening Section 13 of RERA.

10. The complainant has produced the extract of the webpage of the respondents' project showing that more than 50% of the flats have been booked and therefore, the respondent no. 1 are under the legal obligation cast by Section 11 (1)(e) of RERA to form the society or association of the allottees. Despite the same Respondent No. 1 have failed to form the association/society. Hence, I hold them guilty of contravening Section 11(1)(e) of the Act.

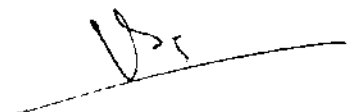
11. It is necessary to note that pending the complaint, the respondent no. 1 sent a letter on 28.09.2017 with the draft of the agreement to the complainant and called upon him to execute the agreement. The copy of the draft agreement is placed on record. It shows that respondent no. 1 have incorporated clause in the agreement to the effect that they shall be able to make additions or alterations in the sanctioned plan, layout plan, and specifications of the building or the common areas and the allottee shall have the consent for it. In fact, Section 14 of RERA provides that the promoter cannot make such additions and alterations in the sanctioned plan, layout plan and specifications without previous written consent of at least 2/3<sup>rd</sup> of the allottees. Therefore, clause incorporated in their draft agreement is against the express provision of Section 14 and it contravenes Section 14 of the Act.

12. In the draft agreement for sale provided by the rules framed under RERA particularly in Clause 18 of the model format, it is clearly mentioned that if the allottee does not sign within 45 days on the draft of the agreement sent by the promoter, then the allotment is deemed to be cancelled and all sum deposited by the allottee in connection therewith including the booking amount shall be returned to the allottees without any interest and compensation whatsoever. This clearly shows that the promoter cannot deduct any part of the booking amount.

13. After taking into consideration the facts established by the complainant showing the contravention of section 12 of RERA, in this case, I find that the complainant is entitled to get back his amount of Rs.37,56,538/-with interest at prescribed rate. It is 2% above the SBI's highest MCLR which is 8.55% at present. He is entitled to get interest from the date of payment till the date of refund.

14. Now the complainant wants to withdraw from the project. Therefore, there is no point in directing the respondent no. 1 to execute the agreement for sale in complainant's favour. In the facts and circumstances, I do not want to impose any penalty on the respondent no. 1 for contravention of the various provisions to which I have referred to in order to give them one more opportunity to improve themselves. But it is necessary to direct the respondent no. 1 for removing the clause of giving blanket consent of the allottees for alterations, modifications of the sanctioned plan, layout plan and specifications. They have to draft clause in consonance with section 14 of the Act. It is also necessary to direct the respondents to form society/association of the allottees.

15. Before parting with this judgement, I want to put on record the fact that the complainant has tape recorded the version of the Sales Executive of Respondent no. 1 showing that the respondent no. 1 agreed to hand over the possession of the flat on or before December 2020. In order to admit such evidence certain precautions were necessary and therefore, in the line of the guidelines given by the Hon'ble High Court regarding admissibility of the tape recorded conversation, the Authority has passed one order on 10.05.2018. The respondent no. 1 felt aggrieved by the said order and took the matter to the Appellate Tribunal. Unfortunately the appeal could not be heard in time. The complaint is pending for more than one year though it is required to be disposed of within 60 days only. Hence, the complainant got fed-up and has passed the purshis on 20.02.2019 to submit that he does



not rely upon the tape recorded conversation to prevent further delay. This is failure of the system which is most unfortunate.

16. After taking into consideration the facts and circumstances of the case, I find it necessary to direct the respondent no. 1 to pay the complainant Rs. 1,00,000/- towards the compensation for causing mental, physical harassment and loss of opportunity. The respondent no. 1 made themselves liable to pay the complainant Rs. 50,000/- on account of the cost of the complaint which lingered for a year. Hence the following order.

### ORDER

The respondent no. 1 shall refund the complainant Rs. Rs.37,56,538/- with interest at the rate of 10.55% per annum from the date of receipt of the amount till its refund.

The respondent shall pay the complainant Rs.1,00,000/- towards the compensation and Rs. 50,000/- towards the cost of the complaint.

The respondent no. 1 shall form the society/association of the allottees of the project within one month of the order.

The respondent no. 1 shall delete the clause from their draft of the agreement which contravenes section 14 of RERA as discussed above.

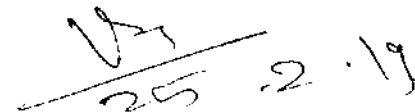
The respondent no. 1 is hereby warned not to contravene any provision of RERA, Rules and Regulations framed thereunder hereafter.

This warning be put on the webpage of the project.

Complaint is dismissed against respondent no.2.

Mumbai.

Date: 25.02.2019.

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