

BEFORE THE MAHARASHTRA ESTATE REGULATORY AUTHORITY,
MUMBAI

COMPLAINT NO. CC006000000000303

Nadim Mohammad Ali Chilwan

....Complainant.

V/s

1. Has Mukh Punshi Nisar
2. Archana Rajendrakumar Waghmare
3. Smt. Vijaya Powar
(Sona Paradise)

... Respondents.

MahaRERA Reg. No. P51700008053

COMPLAINT NO. CC006000000000304

Gufran Khan

Complainant.

V/s

1. Has Mukh Punshi Nisar
2. Archana Rajendrakumar Waghmare
3. Smt. Vijaya Powar
(Sona Paradise)

Respondents.

MahaRERA Reg. No. P51700008053

COMPLAINT NO. CC0060000000001196

Afroz Mohammad Ali Chilwan

Complainant.

V/s

1. Has Mukh Punshi Nisar
2. Archana Rajendrakumar Waghmare
3. Smt. Vijaya Powar
(Sona Paradise)

Respondents.

MahaRERA Reg. No. P51700008053

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

Complainants: In person.

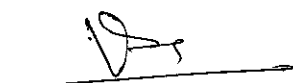
Respondent nos. 1&2: Adv. Mr. Nitin Wathore.

Respondent no3: In person.

FINAL ORDER

28th DECEMBER 2017

The complainants have filed their complaints under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA) for getting refund of their amount with interest and compensation on the respondents' failure to deliver the possession of their flats of respondents' project Sona Paradise situated at Village Sheelgaon, Taluka & District Thane.



2. The complainants Mr. Nadim Mohammad Ali Chilwan has booked a flat bearing no. 404, Mr. Gufran Khan, has booked a flat bearing no. 406, Mr. Afroz Mohammad Ali Chilwan, has booked a flat bearing no. 208 in Sona Paradise and the respondents agreed to deliver their possession on or before 31st December 2015. Complainants want to withdraw from the project and claim refund of their amount with interest and compensation.

3. Respondent nos. 1 & 2 have filed their reply to contend that the respondent no. 3 Smt. Vijaya Powar is the owner of C.T.S. No. 121/3/2 of village Shilgaon, Tal. & Dist. Thane. She entered into a development agreement with them to develop the said plot. They agreed that initially the building shall consist of stilt + 4 floors. The respondent nos. 1 & 2 shall construct the building on their own cost and shall retain 50% of the constructed area and respondent no. 3 shall get 50% of constructed area. The construction was completed upto 80% by the end of December 2015. Thereafter the respondents decided to construct three more floors on the said structure by purchasing TDR. The respondent no. 3 was to pay 50% of the consideration required for purchase of TDR and to get 50% share in the upper three floors by contributing its price but she did not contribute. This happened in October/November 2015. The respondent nos. 1 & 2 had to purchase the additional TDR with the understanding that they shall get the entire constructed portion of the upper three floors. The revised plan was submitted on 26.10.2016 for getting approval of upper three floors. However, the respondent no.3 started to create trouble in carrying construction activities. Therefore, they had to file regular civil suit no. 924 of 2016 in the court of Civil Judge (Senior Division) at Thane but it was dismissed as the partnership firm of respondent nos. 1 & 2 was not registered. Thereafter respondent nos. 1 & 2 got their firm registered and they have filed Special Suit No. 679 of 2017 in the Court of Civil Judge (S.D.), Thane, which is pending. So according to respondent no. 1 & 2, the project could not be completed because of their dispute with respondent no. 3. They further contend that when they started the construction, at that time the rain water accumulated in the ditches/pits made for foundation and they had to suspend the work during rainy season. Public authorities caused delay in sanctioning the revised plan and therefore, they could not complete the construction in time and give the flats to the complainants on the agreed dates. They admit that they executed the agreements for sale in favour of complainants to sell the flats out of their share. They contend that the date of possession namely December 2015 has been wrongly mentioned in the agreements of sale. It

ought to have been December 2016. They have also shown their willingness to pay the rent to the complainants because of the delayed project. It is their contention that the respondent no.3 is also the promoter and therefore, she is equally liable to shoulder the responsibility of the promoters cast by the Act.

4. The respondent no. 3 has been admitted as Respondent No. 3 in this case, on the basis of the order passed by this authority in Complaint No. CC006000000000320. In this order this authority has ruled that she being the owner of the land on which the project is being erected, she comes under the definition of promoter. However, the respondent no. 3 has challenged the said order in Writ Petition (stamp) no. 32410 of 2017 in the Bombay High Court. The Hon'ble High Court has stayed the operation of the order passed by this authority to upload the respondent no. 3's name as one of the promoters. She has not filed her reply/explanation.

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

POINTS	FINDINGS
a, Whether the respondents have failed to deliver the possession of the complainants' flats on the agreed date of possession?	Affirmative
b. Whether the respondent nos. 1 & 2 have proved that the project is delayed because of the reasons which were beyond their control?	Negative
c. Whether the complainants are entitled to get refund of their amount with interest?	Yes

REASONS

6. The respondent nos. 1 & 2 have not disputed the fact that they executed agreements for sale in favour of complainants to sell the flats which came to their share and collected amounts from them. They have agreed to deliver the possession of those booked flats in the month of December 2015. According to them, while mentioning this date there is topographical mistake. It ought to have been December 2016. The respondent nos. 1 & 2 have not led any cogent evidence to show that there is topographical mistake while drafting the agreements for sale. Mistake can occur while drafting one document but it cannot occur in all the three documents executed on different dates. The respondent nos. 1 &



2 have executed the deed of rectification where rectification was really necessary as happened in the case of Nadim Chilwan where the number of the flat is rectified. Respondent nos. 1 & 2 have not taken any such steps for rectification of agreed date of possession. Therefore, I do not find any force in their submission. I hold that the respondent nos. 1 & 2 agreed to deliver the possession of the flats by the end of December 2015. It is agreed by the respondents that the building is incomplete and the possession of the flats has not been given to the complainants. In view of this fact, I hold that the complainants have proved that the respondents have failed to deliver possession on agreed date i.e. the end of December 2015.

7. So far as the reasons of delay assigned by the respondent nos. 1 & 2 are concerned, I do not find that they were beyond their control. It appears from the reply filed by the respondent nos. 1 & 2 and their written argument that by the end of December 2015, the building was completed upto 80%. Initially building comprised of stilt and four floors only. Thereafter in October 2015, the respondent nos. 1 & 2 have taken the decision for acquiring the additional TDR for construction of the upper three floors and thereafter the dispute started between respondent nos. 1 & 2 on the one hand and respondent no. 3 at another. It also appears to me that the respondent nos. 1 & 2 want that the respondent no. 3 should contribute the price to be paid for acquisition of the additional TDR and she refused to contribute it which gave rise to their dispute. Be that as it may. This dispute is the self-creation of the respondents; the complainants are not responsible for it. Respondents have revised plans and sought approval only on acquisition of TDR in 2016. It was possible for them to complete the building as per the first sanctioned plan and deliver the possession to complainants in time. Instead, for their own benefit they stuck the project by ignoring their own legal and contractual obligations. Hence, I find that the reasons of delay assigned by the respondent nos. 1 & 2 were not beyond their control.

Entitlement of complainants:

8. Section 18 of RERA provides that on the failure of the promoters to deliver the possession of a flat on the date specified in the agreement, the allottee gets an option to withdraw from the project and demand his amount with interest and/ or compensation. In these cases, the complainants have exercised their legal right to withdraw from the project and demand their amount with interest. The respondents have

made default in delivering the possession on the agreed date of possession. Hence, the complainants are entitled to get back their amount with interest.

9. Mr. Nadim Chilwan has submitted the statement of the amount paid by him to the respondent nos. 1 & 2. It is being marked as Exhibit 'A' for the purpose of identification. The respondent nos. 1 & 2 have not disputed the fact that Mr. Nadim Chilwan has paid Rs. 5,20,000/- and Rs. 4,00,000/- on 01.06.2014, Rs. 4,32,000/- on 26.09.2014, Rs. 7,28,000/- on 17.11.2014, Rs. 64,352/- on 26.09.2014, Rs. 6000/- on 04.08.2014, this was towards the legal fee of Advocate. Mr. Nadim Chilwan has also paid Rs. 1,45,600/- towards stamp duty and registration fees to the respondent nos. 1 & 2. The respondent nos. 1 & 2 are liable to re-pay the same.

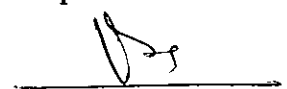
10. Mr. Gufran Khan has also filed the statement of the payment made by him to the respondent nos. 1 & 2 marked Ext 'A'. It shows that he paid Rs. 5,20,000/- on 17.09.2014, Rs. 14,30,000/- have been collected by the respondent nos. 1 & 2 on 19.12.2014 from the bank loan account to Mr. Gufran Khan, he paid Rs. 75,000/- on 19.12.2014 and Rs. 82,000/- towards stamp duty and registration fee of the agreement for sale on 29.11.2014. The respondent no. 1 & 2 have accepted that these amounts have been received by them. Mr. Gufran Khan is entitled to get these amount from the respondent nos. 1 & 2.

11. Mr. Afroz Chilwan has filed the statement of the payment made by him to the respondent nos. 1 & 2 which is being marked as Exhibit-'A' for the identification. The statement shows that he paid Rs. 50,000/- on 11.08.2014, Rs. 2,00,000/- on 22.08.2014, Rs. 5,69,800/- on 13.09.2014, Rs. 1,00,000/- on 18.09.2014, 22.09.2014, 10.11.2014 each & Rs. 20,000/- on 15.12.2014, he also paid Rs. 57,400/- on 11.10.2014 towards stamp duty and registration charges and Rs. 6,000/- towards the advocate's fee on the same day. Mr. Afroz Khan is entitled to get these amount from the respondent nos. 1 & 2, as admittedly they have received them.

12. Section 18 of RERA provides that the allottee is entitled to get their amount with interest at prescribed rate. The rate of interest prescribed by the rules is MCLR of SBI which is currently 8.05 % + 2 %. Thus, the three complainants entitled to get the interest on their amount at this rate from the date of the respective payments. They are also entitled to get Rs. 20,000/- each towards cost of the complaint.

Liability of Respondents

13. I have already referred to the fact that this authority directed that the name of the respondent no. 3 be added as one of the promoters but



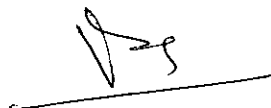
that order has been stayed by the Hon'ble High Court. Normally all the promoters are joint and fully liable to discharge their legal obligations. Here in this case, I find that the development agreement on which respondent nos. 1&2 have relied upon shows that the respondent nos. 1 & 2 were entitled to get 50% of the built-up area and out of this area they have agreed to sale the flats to the complainants. They have received the money paid by complainants. They are liable to make the construction of the project and hand over the possession of flats to the complainants. Therefore, respondent nos. 1 & 2 must shoulder the responsibility to refund the amount to the complainants with interest as mentioned above. Hence, the order.

ORDER

1. The respondent nos. 1 & 2 shall refund the amount mentioned in Para No...9,10,11 to complainants 1) Mr.Nadim Chilwan, 2) Mr. Gufran Khan & 3) Mr.Afroz Chilwan respectively.
2. The respondent nos. 1 & 2 shall pay the aforesaid amount to the complainants with interest at the rate of 10.05 % from the date of their respective payments.
3. The respondent nos. 1& 2 shall pay Rs. 20,000/- towards the cost of complaints to each complainant.

Mumbai.

Date: 28.12.2017.


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