

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: CC006000000000531

1. Bipin More & Gauri More
2. Vijaya & Vijay Sawardekar
3. Subhash Jakali
4. Sohil Kantilal Kapadia
5. Mukesh & Reena Bhatia

...Complainants.

V/s

AjayRaj Realtors Pvt. Ltd.

(AjayRaj Complex)

... Respondents.

MahaRERA Regn. : P99000007945

Hon'ble Shri B.D. KAPADNIS.
(Member & Adjudicating Officer)

22nd December 2017

Final Order

This complaint has been filed under Section 13 & 18 of the Real Estate (Regulation & Development) Act, 2016 (in short, RERA).

Pleading of complainants.

2. The complainant no. 1 Mr. Bipin More booked flat no. C-102 in Phase-I situated in respondents' project Ajayraj Realtors Pvt. Ltd. Respondents agreed to deliver its possession on 31st May 2016.
3. The complainant no. 2, Mr. Vijay & Mrs. Vijaya booked a flat no. B-304, Phase-II of the aforesaid project and respondents agreed to deliver its possession by 31st March 2016.
4. The complainant no. 3, Subhash Jakali booked a flat no. C-305, Phase-II and a flat no. B-203, Phase-I of the aforesaid project and respondents agreed



to deliver their possession on or before 31st March 2016. The respondents failed to execute the agreement for sale of these flats even after receiving more than 10% of the consideration amount.

5. The complainant no. 4, Sohil Kantilal Kapadia booked a flat no. A-103 in Phase-IV of the project and respondents agreed to deliver its possession on or before 31st March 2015.

6. The complainant no. 5 Mr. Mukesh and Mrs. Reena Bhatia booked a flat no.203, Phase-IV and shop no. 20 situated in C building of Phase- I of the said project. Respondents failed to deliver their possession by 31st March 2015. It is further alleged by them that respondents failed to execute the agreement for sale of said shop in their favour even after receiving more than 10% of its consideration.

7. The complainants want to withdraw from the project. They have been claiming all the amount paid by them to the respondents with interest and compensation under Section 18 of RERA. The complainant nos. 3 & 5 are also seeking action against respondents under Section 13 of RERA for non-execution of the registered agreements for sale of their flats and shop as the case is.

Defence of respondents.

8. The respondents have filed their reply to contend that they have received only Rs. 7,31,400/- from complainant no. 1, Bipin More, Rs. 6,36,500/- from complainant no. 2, Mr. Vijay & Mrs. Vijaya, Rs. 9,30,000/- from complainant no.3 Subhash Jakali, Rs. 10,14,590/- from complainant no. 4 Sohi Kantilal Kapadia Rs. 9,10,000/- towards the flat and Rs. 7,73,500/- towards shop from the complainant no. 5 Mr. Mukesh and Reena. The respondents deny their liability to pay the amount, interest and compensation claimed by the complainants. Respondents were authorized to revise the possession date and accordingly it has been revised. The project is delayed because its director suffered heart attack and he was under medical treatment. He could not manage the finance because of demonetization scheme of the Govt. and the implementation of GST. According to them, the possession of the flats shall be handed over by the end of December 2018. They further contend that the agreements / transactions had taken place prior to 1st May



2017. that is, before coming into force of RERA. Therefore, complainants cannot claim the relief under RERA.

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

POINTS	FINDINGS
1. Whether MahaRERA has jurisdiction to entertain and adjudicate upon this complaint?	Yes.
2. Whether respondents have failed to deliver the possession of the flats/shop booked by the complainants on the agreed date of possession?	Yes
3. Whether the respondents have failed to execute agreement of sale even after receiving more than 10% of consideration amount of flat no.C-305, in favour of complainant no. 3, Subhash Jakali?	Yes.
4. Whether the respondents have failed to execute the agreement of sale even after receiving more than 10% of consideration amount of shop no. 20, C-Wing, Phase-I in favour of the complainant no. 5 Mr. Mukesh & Mrs. Bhatia?	Yes.

REASONS.

Admitted facts:

10. There is no dispute between the parties on following facts

- the complainant no. 1, Mr. Bipin More booked flat no. C-102 and respondents agreed to deliver its possession on 31st May 2016.
- The complainant no. 2, Mr. Vijay & Mrs. Vijaya booked a flat no. B-304, Phase-II of the aforesaid project and respondents agreed to deliver its possession by 31st March 2016.



- c. The complainant no. 3, booked a flat no. C-305, Phase-II and a flat no. B-203, Phase-I of the aforesaid project and respondents agreed to deliver their possession on or before 31st March 2016.
- d. The respondents failed to execute the agreement for sale of these flats even after receiving more than 10% of the consideration amount.
- e. The complainant no. 4 booked a flat no. A-103 in Phase-IV of the project and respondents agreed to deliver its possession on or before 31st March 2015.
- f. The complainant no. 5 Mr. Mukesh and Mrs. Reena Bhatia booked a flat no.203, Phase-IV and shop no. 20 situated in C building of Phase- 1 of the said project. Respondents failed to deliver their possession by 31st March 2015.
- g. Respondents failed to execute the agreement to sale in their favour in respect of said shop even after receiving more than 10% of its consideration.

Jurisdiction.

- 11. The Respondents have taken a plea that since the transaction had been transacted and agreements for sale have been executed before 01.05.2017, i.e. before the implementation of RERA in the State of Maharashtra. This authority has no jurisdiction to entertain this complaint.
- 12. It is pertinent to note that Section 71 of RERA provides that the litigation arising out of Section 12, 14, 18 & 19 can be adjudicated upon by the adjudicating officer, if compensation is also claimed as one of the reliefs. Not only that, it further provides that if any such litigation was pending before the Consumer Dispute Redressal Forum, Consumer Dispute Redressal Commission, of the state or National Commission on or before commencement of Act, the complainants may withdraw those cases with the permission of the forum or the commission and file them before the Adjudicating Officer under RERA. The right to get the possession arises only after lapse of agreed date of possession. It is admitted fact that the respondents have not given the possession of the flats and shop booked by the complainants till the date of complaint, therefore cause of action to claim refund of the amount with interest and/or compensation survives even after coming into operation of the RERA in this case.



13. Section 13 of RERA makes it obligatory on the part of the promoter not to accept sum more than 10% of the cost of the apartment without entering into a written agreement for sale and registering it. The respondents themselves have agreed that they have received Rs.9,30,000/- from the complainant no. 3 and Rs. 7,73,500/- from the complainant no. 5 in respect of flats and shop booked by them. The respondents have not executed any agreement for sale of the flats and shop in favour of these complainants even after coming into force of RERA. Therefore, their cause of action arising out of Section 13 of RERA survives on the date of complaint. In these circumstances, I find that MahaRERA has jurisdiction to entertain and adjudicate upon this complaint.

Delayed possession.

Relevant law.

14. Section 18 of RERA provides that when the promoter fails or is unable to deliver the possession of the apartment, building or plot on the date of possession mentioned in the agreement, then the allottees get two options. The first option is to withdraw from the project and claim all amount paid by them with interest and compensation. The second option is to continue in the project and claim the interest on every month of default, on the amount paid to the promoter till they get the possession. This right is conferred upon the allottees by law and they are free to choose one out of the two options. Nobody can compel the allottees to choose the option which they do not want to choose. It is their sweet choice. The complainants in this case, therefore, have exercised their option to withdraw from the project and claim all the amount paid by them with interest and composition also.

15. There is no denial of the fact that respondents have failed to deliver possession of the flats/shop booked by complainants on agreed date of delivering possession. Hence I hold that there is delay in giving possession of the flats and shop booked by complainants.

16. The reasons assigned by respondents for causing delay have not been substantiated. Moreover, they cannot be said to be sufficient and that they were beyond the control of the respondents. Hence complainants are entitled to get refund of their amount with interest under section 18 of RERA.



Entitlement of the complainants.

Bipin More & Gauri More

17. a. The respondents have not disputed the fact that Mr. & Mrs. More paid them Rs. 44,000/- on 10.02.2015, Rs. 72,250/- on 05.03.2015, Rs. 23000/- on 30.03.2015, Rs. 3,70,000/- and Rs. 72696/- (Home Loan) on 31.03.2015, Rs. 1,72,150/- (Home Loan) on 02.07.2015. Respondents are liable to refund these amount.

17.b. The complainant has been claiming Rs. 50,600/- paid by him towards stamp duty and Rs. 14020/- towards registration charges. The challan produced in the matter shows that the respondents paid the stamp duty. Hence, on the cancellation of the agreement for sale, the respondents will be entitled to get back the refund of it. The complainant cannot be made liable to sustain the monetary loss because he is not at fault. The respondents have failed to deliver the possession on the agreed date and hence, they are liable to sustain the loss of the registration charges as they defaulted.

Mr. Subhash Jakali

18.a. The respondents have not disputed the fact that they received Rs. 1,00,000/- each on 21.01.2015, Rs. 1,00,000/- on 15.01.2015, Rs. 1,00,000/- on 10.02.2015, Rs. 50,000/- on 21.03.2015, Rs. 5,30,000/- on 11.04.2015, Rs. 50,000/- on 21.03.2015, in respect of the flat no. 203-B Wing.

18.b. The respondents have not disputed the fact that they have received Rs. 50,000/- on 10.02.2015, Rs. 3,61,500/- on 25.02.2015, Rs. 1,00,000/- on 18.02.2015 in the context of flat no. 305. Respondents are liable to refund these amount.

18.c. The complainant could not prove that he paid Rs. 60,000/- on 06.02.2015 and Rs. 60,000/- on 11.02.2015. Hence, he is not entitled to claim these two amount.

Vijay and Vijaya Savardekar.

19.a. The respondents have not disputed the fact that they received Rs. 11,000/- on 10.12.2014, Rs. 2,51,000/- on 18.12.2014, Rs. 2,73,000/- on 25.02.2015, Rs. 50,000/- on 08.02.2015, Rs. 13,000/-, Rs. 25,000/-, Rs. 25,000/-



and Rs. 40,000/- on 08.01.2015, Rs. 14,000/- on 07.01.2015. Respondents are liable to refund these amount.

19.b. The complainant claims Rs. 52,400/- towards the stamp duty and registration charges amounting to Rs. 13,100/- Rs. paid on 07.01.2015. The complainant is entitled to get the reimbursement of these amount for the reasons mentioned in para17.b. of the order.

19.c. The complainant claims Rs. 10,000/- paid in cash to the respondents. However, he has failed to prove the payment of this amount.

Mr. Sohil Kapadia

20. Respondents have not disputed that they received Rs. 1,00,201/- on 01.01.2014, Rs. 1,56,000/- on 07.01.2014, Rs. 1,38,890/- on 07.09.2015, Rs. 4,799/- on 19.09.2015, Rs. 6,14,700/- on 24.09.2015, Rs. 2,700/- on 28.09.2015. The complainant claims Rs. 1,699/- paid on 30.09.2015 on account of Bank documentation charges and Rs. 7,070/- paid to the Bank towards legal charges on 09.10.2015. The complainant is entitled to get the reimbursement of these amount.

Mukesh & Reena Bhatia.

21.a. The respondents have admitted that they have received from the complainant Rs. 21,000/- and Rs. 1,70,000/- on 29.05.2013, Rs. 2,00,000/- on 05.06.2013 and Rs. 30,400/- on 17.06.2013, Rs. 5,58,600/- (Home Loan) on 18.02.2015, Rs. 1,30,000/- (Home Loan) on 03.04.2015. The respondents admit that Rs. 8,000/- have been received towards the professional fee of the advocate. Respondents are liable to refund these amount.

21.b. The complainant claims Rs. 57,200/- a stamp duty, Rs. 14,460/- registration charges paid on 29.04.2014. The complainant also claims Rs. 7,068/- paid by him towards Bank charges for passing loan and Rs. 6,000/- paid towards advocate charges paid on 14.05.2000. The complainant also claims Rs. 53,170/- paid on 23.05.2015 towards the service taxes and VAT. The complainant is entitled to get these amounts for the reasons mentioned in Para17.b of the order. These amount were paid in respect of flat no. 203.

21.c. In the context of shop no. 20, the respondents admitted that they have received Rs. 1,30,000/- on 31st July 2013, Rs. 50,000/- on 11.12.2013,



Rs.2,37,241/-, Rs. 50,000/-, Rs. 36,259/- on 13.09.2013, Rs. 30,000/- on 07.12.2014, 13.01.2015, 16.02.2015, 13.03.2015, 16.04.2015, 10.03.2015 each, Rs. 60,000/- on 10.07.2015, Rs. 10,000/- on 10.08.2015, 10.09.2015, 10.10.2015 each. Respondents are liable to refund these amount.

22. Section 18 provides that the allottees are entitled to get return of the amount with the interest prescribed by the rules. The prescribed rate is MCLR of interest of SBI which is currently 08.05% + 2%. The complainants are entitled to get the interest at this rate from the date of the payments made by them.

The non-execution of the agreement of sale:

Relevant law.

23. Section 13 of the RERA provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from the person without first entering into a written agreement for sale with such person and registered the sale agreement for sale under any law for the time being in force.

24. The respondents have not disputed the fact that though the complainant no.3 has booked flat No. B- 203, Phase-I and flat no. 305, Phase-II, they have not executed the agreement for sale of these flats and register them. The respondents have also not disputed that shop no. 20 booked by the complainant no. 5, Mukesh & Reena. Respondents have not executed the registered agreement for sale of these flats and shop though more than 10% of the consideration amount has been received by them. Section 13 of RERA mandates that it is the duty of the promoter to execute agreement for sale and register it before he accepts more than 10% of the consideration. I record finding that, after coming into force of RERA it was obligatory on the part of respondents to execute the agreements for sale and register them in favour of the complainants but the respondents have failed to discharge their duty imposed by Section 13 of RERA. However, it is not necessary to issue any directions to the respondents in this regard because the complainants have been withdrawing themselves from the project.

In the result, the following order.



ORDER

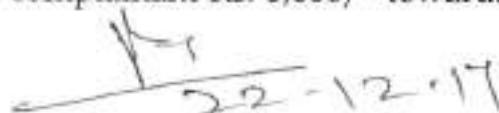
1. The respondents shall pay the complainant no. 1 the amount mentioned in paragraph 17. A. &b. of this order.
2. The respondents shall pay the complainant no.2 the amount mentioned in paragraph 18.a.&b. of this order.
3. The respondents shall pay the complainant no.3 the amount mentioned in paragraph 19. a.&b.of this order.
4. The respondents shall pay the complainant no.4 the amount mentioned in paragraph20 of this order.
5. The respondents shall pay the complainant no.5 the amount mentioned in paragraph 21a.b.&c. of this order.

The respondents shall pay the complainants these amount with interest at the rate of 10.05% from the dates of their receipts till their payment.

The respondents shall pay each complainant Rs. 5,000/- towards cost of the complaint.

Mumbai.

22.12.2017.



B.D.Kapadnis.

Adjudicating Officer&
Member, MahaRERA