

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000000470

Vikram Hastimal Jain

... Complainant

Versus

Sylvanus Properties Limited
MahaRERA Regn.No. P52000001481

... Respondent

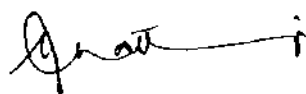
Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA
Complainant was himself present.

Respondent was represented by Mr. Abir Patel, Advocate, (Wadia Gandhi & Co.)

Order

21st December 2017

1. The complainant has entered into a registered agreement for sale (*hereinafter referred to as the said agreement*) dated March 18, 2015 to purchase an apartment bearing No. D5501' in the Respondent's project 'Indiabulls Savroli - 1' situated at, Savroli, Khalapur. The complainant alleged the date of possession as stipulated by the said agreement is October, 2016.
2. Complainant allege the respondent has failed to hand over possession of the said apartment within the stipulated period and therefore he intends to withdraw from the project as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
3. During the hearing held on December 18, 2017, advocate for the respondent argued the timelines for handing over possession of the said apartment will have to be read with the provisions as stipulated under Clause 22(a)(v) of the said agreement. Specifically, he argued that the said clause stipulates that the Respondent is entitled to reasonable extension of time for giving delivery of said apartment if there is a delay in issuing the occupy certificate by the concerned local authority. The relevant portion of Clause 22(a)(v) of the said agreement reads thus:



"...

Provided that the Promoter shall be entitled to reasonable extension of time for giving delivery of said Apartment on the aforesaid date, if the completion of building in which the said Apartment are situated is delayed on account of

(i) ...

...

(v) delay in issuing any permission, approval, NOC, sanction and/or building occupation certificates and/or completion certificate by the concerned authorities; and/or

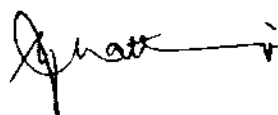
(vi) delay in securing necessary permissions or completion / occupancy certificate from the competent authorities or water, electricity, drainage and sewerage connections from the appropriate authorities, for reasons beyond the control of the Promoter;

(vii) force majeure or any other reason (not limited to the reasons mentioned above) beyond the control of or unforeseen by the Promoter, which may prevent, restrict, interrupt or interfere with or delay the construction of the Building including the said Apartment, and/or;

(viii) ...

... "

4. Further, he argued that the completion of the project is delayed because of reasons which were beyond the Respondent's control and well stipulated for in the said agreement. He also stated that the Respondent has already applied for Occupation Certificate to the concerned local authority on June 26, 2017 which is well within the grace period of 9 months provided for in the agreement for sale. He further said that the possession of the said apartment can be handed over by July, 2018.
5. The complainant, in alleging that the date of possession is October 2016, has failed to take into account the further extensions stipulated under clause 22(a)(v) of the said



agreement. Accordingly, there has been no delay, in accordance with the terms of the agreement of sale, as alleged by the complainant.

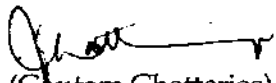
6. Further, Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as :

“if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. ”

Accordingly, since the complainant has failed to establish contravention of provisions of section 18 of the said Act, the question of interest on delay does not arise.

7. In view of the above facts, the respondent shall, therefore, handover the possession of the said apartment, with Occupancy Certificate and common amenities as mentioned in the said agreement, to the complainant before the period ending March, 2018, failing which the respondent shall be liable to pay interest to the complainant from April 1, 2018 till the actual date of possession, on the entire amount paid by the complainant to the respondent. The said interest shall be at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017.
8. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA