

**BEFORE THE ADJUCATING OFFICER WITH
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO: **CC0060000000023202**

L. & T. Financial Consultants Ltd. ... Complainant.
Versus
M/s. Avarsekar Reality Pvt.Ltd. ... Respondent.

MahaRERA Regn No. : P51900002867

COMPLAINT NO: **CC0060000000023233**

L. & T. Financial Consultants Ltd. ... Complainant.
Versus
M/s. Avarsekar Reality Pvt.Ltd. ... Respondent.

MahaRERA Regn No. : P51900002867

COMPLAINT NO: **CC0060000000023236**

L. & T. Financial Consultants Ltd. ... Complainant.
Versus
M/s. Avarsekar Reality Pvt.Ltd. ... Respondent.

MahaRERA Regn No. : P51900002867

COMPLAINT NO: **CC0060000000023237**

L. & T. Financial Consultants Ltd. ... Complainant.
Versus
M/s. Avarsekar Reality Pvt.Ltd. ... Respondent.

MahaRERA Regn No. : P51900002867

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudating Officer.

Appearance:

Complainants: Jyoti Ghag
Respondent : Pulkit Sharma

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22/5/18

COMMON ORDER
Dated 22nd May, 2018

1. The Complainants have filed complaints for refund of amount together with interest paid to the Respondent at time of booking of the flats. The Complainant in the Complaint No.23302 has booked flat No.2701, that in Complaint No.23233 booked flat No.2702, that in Complaint No.23236 booked flat No.2901, and that in Complaint No.23237 booked flat No.2902, in the building Shristi Sea View (earlier knows as "Avarsekar's Adhiraj Sea View Tower"), Mahim, Mumbai. The Agreements were registered in that respect on 29.07.2013. Payment of 50,00,000/- was made under each agreement. The Promotor had undertaken to bear stamp duty of Rs.33,00,000/- but ~~observed~~ ^{observed} to adjust the amount on payment of First instalment of Rs.18,48,00,000/. The Complainants have paid the amount of Rs.5,28,00,000/- for each flat. The Complainants have fulfilled their obligation in the Agreement by making all the payments by 31.01.2014. Possession of the flat was to be delivered within 36 months. However, the Respondent has not delivered possession of the flats. Therefore, each Complainant seeks refund of amount of Rs.5,28,00,000/- alongwith interest.
2. The Respondent has filed Written Submissions in my absence on 10.04.2018. In fact, the Respondent had not appeared on 21.2.2018 before the Authority. On 20.3.2018 also Respondent failed to appear before me when the matter was called out by 3 p.m. The matter came to be adjourned for Judgment to 27.03.2018. However, the Respondent appeared at 5.00p.m. and submitted that he will file his written submissions on next

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date i.e. 27.03.2018. In his Written Explanation, Respondent alleged that, notice was not served on him. The email ID was that of employee Samir Moghe who had already resigned. Anyway, on 20.3.2018, the Respondent was permitted to file his Written Explanation before the next date and he appears to have complied with it.

3. It is alleged on behalf of Respondent that project was initially started by Avarsekar Developers which subsequently got converted to Avarsekar Reality Pvt.Ltd. The Respondent sold numerous flats to intending purchasers including complainants and executed registered agreements of sale in that respect. As the respondent was burdened with liabilities and outstanding loan of more than 100 crores Rupees, Bharat Nirman Fund took over the Respondent company by purchasing 99% shares and remaining 1 % shares were purchased by Shristi Housing Development Ltd., which transferred 100 shares to Shristi Infrastructure Development Corporation Ltd. The Respondent is a wholly owned subsidiary of Shristi Infrastructure Development Corporation which is a Pan India Company.
4. Complainant agreed to purchase flats in the building Shristi Sea View to be developed / constructed by M/s. Avarsekar Reality Pvt. Ltd. vide registered agreement dated 29.07.2013. As per Clause 17 of the agreement, Promoter shall give possession of the said premises to the Purchaser on or before 36 months from the date of execution of this agreement subject to obtaining Occupation Certificate from the Municipal Corporation of Greater Mumbai on completion of project. Clause 20 of the agreement provides for Force Majeure contemplated under Maharashtra Ownership Flats Act. The project was registered under the RERA

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which came into effect from May 1, 2017. The Registration reveals that proposed date of completion is 31.12.2019.

5. As per the approved plan and recommendation of MCGM, the Respondent company on 21.2.2012 had applied for Environment Clearance. However, it is not received till this date. On 12.09.2012, the Respondent company had applied before Airport Authority of India for issuance of No Objection Certificate for a height clearance 158.15 AMSL. On 27.02.2013, the said Authority gave clearance upto 107.35 AMSL. The Respondent obtained Commencement Certificate upto 15th floor and had completed the casting of 14th floor slab. Lateron, Respondent obtained Commencement Certificate upto 27th floor on 29.10.2015. An Appellate Committee of Airport Authority of India had approved the clearance of 127.15 AMSL on 12.06.2017. The Respondent obtained Commencement Certificate dated 31.10.2017 upto 30th floor. Environment Clearance is not granted by concerned Authority and therefore Commencement Certificate beyond 30th floor cannot be obtained. The Respondent is diligently trying to complete the project and handover the flats to respective Purchasers. CRZ clearance was obtained on 13.04.2015. Because of the delay by Statutory Authority, the project has been delayed despite best efforts of the Respondent. Hence, the complainant is not entitled to the relief claimed.

6. On the basis of the rival contentions of the parties, following points arise for determination, I have noted my findings against them for the reasons stated below:

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| <u>Points</u> | <u>Findings</u> |
|--|------------------------|
| 1. Has the Respondent committed default in handing over the possession as per Agreement? | Yes |
| 2. Is the Complainant entitled for refund of amount paid alongwith interest? | Yes |
| 3. What Order? | As per Final Order. |

REASONS

7. The flats agreed to be purchased by Complainant in Complaint No.23202 i.e. 2701 and in Complaint No.23233 i.e. 2702 are on the 27th floor. The flat in Complaint No.23236 i.e. 2901 and in Complaint No.23237 i.e. 2902 are on 29th floor. All the four Agreements were executed on 29.07.2013 which means that Respondent intended to construct a building of more than 29 floors on the date of the Agreements. As per clause 17 of the Agreement, the Respondent was bound to deliver possession of the premises before 36 months from the date of execution of Agreement subject to obtaining Occupation Certificate from MCGM on completion of project.

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8. Shri Pulkit Sharma, Learned Counsel for Respondent has vehemently argued that delivery of possession was subject to obtaining Occupation Certificate. The Respondent applied for Clearance to Airport Authority of India and was successful only after approaching Appellate Authority. The Respondent applied for Environment Clearance in 2012, but the clearance is not yet given. These facts were beyond the control of the Respondent. Except the Complainant none of the flats Purchasers is having any grievance. In fact, the Complainant is not a bonfide purchasers of the flats but it is a money lending transaction. Therefore, no fault can be found with the Respondent. Shri Prabhu, Learned Counsel for Complainant has submitted on the other hand the letter at page 113 of the Respondent clearly shows that the Complainant is bonafide purchaser of the flat. Shri Prabhu, solicited my attention to the Agreement clauses AA, VV, EE, FF, NN, Clause 2 and 2.2. Shri Prabhu also solicited on my attention to section 15(2) of the RERA, Shri Prabhu has submitted that the fault totally lies with the Respondent and it cannot be condoned.

9. It is true that agreements were executed on 29.07.2013. As stated earlier, flats in First 2 agreements are on 27th floor and flats in other 2 agreements are on 29th floor. As per agreements, the possession was required to be delivered on or before 29.07.2016. It is the contentions of the Respondent that Clearance from Airport Authority upto 27th floor was received on 29.10.2015. Commencement Certificate upto 30th floor was obtained on 31.10.2017. Thus, the delay has occurred because

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of delay in clearance from statutory authority. The Respondent had to approach Appellate Authority for the clearance.

10. Let 'us consider for a moment that the delay in clearance from Airport Authority for 29th floor cannot be attributed to the Respondent. Still the question is why after obtaining clearance from Airport Authority upto 27 floors, the Respondent has not completed the construction and delivered possession to the Complainant. The present complaints were filed on 21.2.2018. Respondent claims that he is pursuing for environmental clearance since 2012. Question is whether he made the complainant aware of this position. There is nothing to substantiate such thing. The Respondent says that the proposed date of completion is 31.12.2019. This extension is done by Respondent unilaterally without the consent from Complainant. It appears that till this date, the construction has not been completed. In my opinion and Respondent has to shoulder the responsibility for the delay. Therefore, Complainant is entitled for refund of the amounts paid by it to the Respondent. I, therefore answer said Nos. 1 & 2 in the affirmative and proceed to pass following order:-

ORDER

1. The Respondent shall pay Complainant in each complaint ^{amt} Rs.5,28,00,000/- received by him together with interest @ 10.05 percent per annum from the date of filing of complaint till actual realisation.

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2. The Respondent shall pay Rs.1,00,000/- to the Complainant in each case as compensation.

3. No order ^{with costs} has to ~~be~~ passed.

Date: 22/05/2018

Mh
22-5-2018
Madhav Kulkarni,
Adjudicating Officer,
MAHAREARA, MUMBAI.