

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI

COMPLAINT NO: CC006000000055226

*Mrs. Parminderkaur S. Chopra Complainant.
(Name corrected as per the letter
of Mr. Deolekar)

Versus
M/s Reliance Enterprises Builder Respondents.
& Developers.
(Hill View)
MahaRERA Regn: P51800005482

Coram:
Shri B.D. KAPADNIS.
Member & Adjudicating Officer,
MahaRERA, Mumbai

Appearance
Complainant: Adv. Aditya Deolekar.
Respondents: Adv. Divya M. Chopra.

Final Order.
21st September 2018.

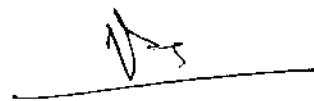
Pleadings of complainant.

The complainant has filed this complaint u/s. 18 of Real Estate Regulation and Development, Act 2016 (RERA). She contends that she booked Apartment No. 704, of Respondents' Hill View project situated at Chembur. This apartment is in the sale component of the Respondents' SRA project. The respondents agreed to deliver the possession of the flat on or before 31st December 2017. The respondents have failed to deliver the possession of the flat by 31st December 2017. The complainant wants to continue in the project and claims interest on her amount from the date of default till she gets possession of the flat for every month of default.

Defence of respondents.

2. The respondents have filed the reply to submit that the complainant was aware of the fact that the project was being developed under SRA scheme and therefore the possession of her flat was likely to be delayed beyond the agreed date of possession. Not only that, this was the tentative date depending upon the availability of the building materials and the possession was likely to be delayed because of the Govt. Rules, orders, regulations, etc. They admit that they have not handed over the possession of the flat to the complainant on agreed date because the letter of intent required them to seek various permissions and approvals mentioned in it. The main reasons which delayed the project are;

1. Acquisition of CTS No.148, the adjoining plot. One of the conditions is to acquire this private plot and to include it in the scheme. Its owner was not traceable and therefore the acquisition proceeding was started by SRA on 30.03.2015. But thereafter the said authority did not follow it up and the plot is not yet acquired. Hence, FSI of the same plot has not been granted to the respondents.
2. D.P. Road setback by MCGM- as per the condition laid down by LOI, the respondents' Architects applied to MCGM on 25.11.2013 to get D.P. Road setback land demarcated from A.E. (Survey/D.P./TNC/Dept. of MCGM) and to hand it over free of cost and free of encumbrances to MCGM for obtaining CC for the last 25% of sale built up area. However, they did not get any response from 25.11.2013.



3. NOC for 60 mtrs. Wide Anik Bandra Pinjrapole road. In this context to meet the requirement of L.O.I. they applied on 28.12.2009, however, on 23.4.2010 they received a letter from MMRDA to rehabilitate a mosque. On 20.4.2012 they explained their inability to accommodate the said mosque in SRA scheme and that issue was pending till 13.10.2016 when they filed revised application for NOC.
4. High Rise NOC : They applied for High Rise NOC on 10.03.2013. The concerned authority issued it on 19.04.2017.
5. Revised LOI letter dated 7.6.17 - The application for revised LOI has been submitted on 7.6.17 and it is pending. Hence, they contend that the project is delayed.

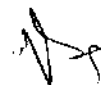
3. Therefore, respondents contend that the complainant is not entitled to get interest on her amount especially when the project is nearing its completion.

4. The following points arise for determination. I record my findings thereon as under: -

POINTS.

FINDINGS.

1. Whether the respondents failed to deliver the possession of the flat on agreed date? Affirmative.
2. Whether the respondents have been prevented by the causes beyond their control from completing their project in time? Negative.



3. Whether the complainant is entitled to get interest on her investment till getting possession of the flat? Affirmative.

Reasons:

Legal Provision. -

5. Section 18 of RERA provides that when the promoter fails to complete or is unable to give possession of apartment in accordance with the terms of the agreement for sale or duly completed by the date specified therein, he shall be liable, to pay interest on the allottee's investment if allottee wishes to continue in the project for every month of delay till he gets the possession of the flat.

6. The rules framed under the Act have prescribed the rate of interest. It is 2% above the State Bank of India's highest marginal cost of lending rate. It is currently 8.5%. Hence, the allottee is entitled to get the interest @ 10.5% from the date of default till handing over the possession of the flat.

Delayed Possession:

7. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flat to the complainant by the end of December 2017 but they have not delivered it till the date of complaint. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date. The respondents summoned official from SRA but failed to adduce his evidence.




Reasons for Delay:

8. The learned Advocate of respondents submits that the respondents were required to take several permissions and approvals from various authorities mentioned in the letter of intent dated 19.10.2011. She has pointed out the reasons of delay, viz. acquisition of plot bearing CTS No.148; D.P. Road setback issue; rehabilitation of the mosque; the delay caused by the authorities in granting high rise NOC and revised letter of intent dated 07.06.2017 which are referred to above. According to her, these causes were beyond the control of the promoter and therefore they could not complete the project in time.

9. At this stage it is necessary to keep in mind that Maharashtra Ownership of Flat Act, 1963 is in force and Section 88 of RERA permits its application. The agreement for sale has been executed in accordance with the provisions of Maharashtra Ownership of Flat Act. Section 8 of the said Act provides remedy of refund of the allottees' amount on promoter's failure to give possession in time. Its clause (b) provides that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified and a period of 3 months thereafter or a further period of 3 months, if the reasons still exist, then promoter shall be liable on demand to refund the amount already received by him with simple interest @ 9% p.a. from the date he received the same till they are refunded.

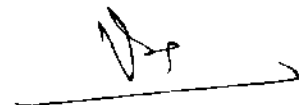
10. In view of this provision, I find that even if it is proved by the respondents that they were prevented by the causes which were beyond their control to complete the project in time, they are entitled to get the extension of 6 months at the most and not more than that. **In Neelkamal Realtors Pvt. Ltd. Versus Union of India Writ Petition No.2737 of 2017, Hon'ble Bombay High Court in its Ordinary Original**



Civil Jurisdiction has held that the promoter having sufficient experience in open market, is expected to have a fair assessment of time required for completing the project. So when the promoter offers any flat for sale and specifies the date of possession, he has to assess all the difficulties which he is likely to face in completing the project. Once he specifies the date to deliver the possession, he is bound by it. However, in order to attract the customers, promoter specifies the earlier date though he knows that he would not complete the construction on the date so specified. This is nothing but the dishonesty of the promoter and he indulges in such unfair practice in order to attract the customers for selling his product and to grab their money at the earliest opportunity. Here, in this case the respondents have mentioned that since beginning of the launch of the project they were aware of the fact that various NOCs, permissions and approvals were required and the problems they were likely to face. Despite these facts, they have executed agreement for sale with the complainant in July 2016 and promised to deliver the possession by end of December 2017. Therefore, I find it difficult to hold that respondents have been prevented by the causes which were beyond their control, to complete the project in time. The pleadings of the respondents further demonstrate that they have not acted vigilantly to pursue the matter with the authorities. They cannot take advantage on their own wrongs and reasons assigned by them.

Entitlement of the Complainant.

11. The complainant has filed the statement of her claim marked Exhibit- 'A' showing that she paid Rs. 1,13,79,774/- towards consideration. The respondents have admitted the receipt of all amount. The complainant is entitled to get interest on these amount at




prescribed rate from the date of default till she gets the possession of her flat.

12. The complainant is entitled to get interest on her amount paid to the respondents because respondents have failed to deliver the possession of the flat on agreed date. Respondents have defaulted in keeping their promise and hence they must shoulder liability of paying interest. In addition to the above amount, the complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

- A. The respondents shall pay simple interest @ 10.5% p.a. on the amount Rs. 1,13,79,774/- mentioned in payment format marked Exh. 'A' from 01.01.2018 till the possession of the flat is handed over.
- B. Respondents shall pay Rs. 20,000/- to the complainant as the cost of the complaint.

Mumbai
Date: 21.09.2018.


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

Before the Hon'ble Maharashtra Real Estate Regulatory Authority,

Bandra Mumbai

Complainant No. CC006000000055226

Mrs. Parminderkaur S. Chopra

...Complainant

Versus

Reliance Enterprise

...Respondent

PAYMENT FORMAT

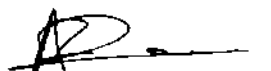
Sr. No.	Date	Amount (in Rupees)	Purpose	Receipt No. / Cheque No. with Bank Name
1.	11/11/2013	5,00,000/-	Token Amount	Paid by cheque bearing No. 000036 dated November 11, 2013 drawn on Bank of Baroda and a receipt bearing no. 729 confirming such payment was issued by the Respondent on December 4, 2013
2.	15/12/2013	20,84,000/-	Part Consideration	Paid by the cheque bearing No. 000073 dated December 15, 2013 towards part consideration of the said Flat and a receipt bearing no. 759 was issued by the Respondent to the Complainant on December 23, 2013

Sr. No.	Date	Amount (in Rupees)	Purpose	Receipt No. / Cheque No. with Bank Name
3.	12/02/2014	10,00,000/-	Part Consideration	Paid by the cheque bearing No. 000081 dated February 12, 2014 drawn on Bank of Baroda and a receipt bearing no. 697 confirming such payment was issued by the Respondent to the Complainant on March 8, 2014.
4.	15/02/2014	10,00,000/-	Part Consideration	Paid by the cheque bearing No. 000084 dated February 15, 2014 drawn on Bank of Baroda and a receipt bearing no. 810 confirming such payment was issued by the Respondent to the Complainant on March 19, 2014
5.	17/05/2014	1,00,000/-	Part Consideration	Paid by the cheque bearing No. 000089 dated May 17, 2014 drawn on Bank of Baroda and a receipt bearing no. 930 confirming such payment was issued by the Respondent to the Complainant on May 28, 2014
6.	26/05/2014	1,00,000/-	Part Consideration	Paid by the cheque bearing No. 000090 dated May 26, 2014 drawn on Bank of Baroda and a receipt bearing no. 961 confirming such payment was issued by the Respondent to the Complainant on June 18, 2014;

Sr. No.	Date	Amount (in Rupees)	Purpose	Receipt No. / Cheque No. with Bank Name
7.	15/12/2014	33,40,729/-	Part Consideration	Paid by the cheque bearing No. 000094 dated December 15, 2014 drawn on Bank of Baroda and a receipt bearing no. 1445 confirming such payment was issued by the Respondent to the Complainant on December 20, 2014
8.	11/03/2014	10,48,471/-	Part Consideration	Paid by the cheque bearing No. 000101 drawn on Bank of Baroda, however, no receipt was issued by the Respondent confirming such payment but the bank statement of the Complainant No. 1 for the period between 01/03/2013 to 27/06/2018 reflects such debit entry of such amount at page no. 4
9.	16/06/2015	2,58,400/-	Part Consideration	Paid by the cheque bearing No. 000113 dated June 16, 2015 drawn on Bank of Baroda and a receipt bearing no. 1823 confirming such payment was issued by the Respondent to the Complainant on July 4, 2015
10.	27/02/2016	3,87,574/-	Part Consideration	Paid by the cheque bearing No. 000139 dated February 27, 2016 drawn on Bank of Baroda and a receipt bearing no. 1973 confirming such payment was issued by the

Sr. No.	Date	Amount (in Rupees)	Purpose	Receipt No./ Cheque No. with Bank Name
				Respondent to the Complainant on March 2, 2016
11.	22/03/2016	2,58,400/-	Part Consideration	Paid by the cheque bearing No. 000140 dated March 22, 2016 drawn on Bank of Baroda and a receipt bearing no. 2025 confirming such payment was issued by the Respondent to the Complainant on March 28, 2016
12.	13/07/2016	2,75,400/-	Part Consideration	Paid by the cheque bearing No. 000148 dated July 13, 2016 drawn on Bank of Baroda and a receipt bearing no. 2266 confirming such payment was issued by the Respondent to the Complainant on July 22, 2016
13.	01/08/2016	2,56,700/-	Part Consideration	Paid by the cheque bearing No. 000150 dated August 1, 2016 drawn on Bank of Baroda and a receipt bearing no. 2306 confirming such payment was issued by the Respondent to the Complainant on August 9, 2016
14.	07/09/2016	2,56,700/-	Part Consideration	Paid by the cheque bearing No. 000149 dated September 7, 2016 drawn on Bank of Baroda and a receipt bearing no. 2372 confirming such payment was issued by the

Sr. No.	Date	Amount (in Rupees)	Purpose	Receipt No. / Cheque No. with Bank Name
				Respondent to the Complainant on September 13, 2016
15.	01/10/2016	2,56,700/-	Part Consideration	Paid by the cheque bearing No. 000151 dated October 1, 2016 drawn on Bank of Baroda and a receipt bearing no. 2442 confirming such payment was issued by the Respondent to the Complainant on October 20, 2016
16.	01/11/2016	2,56,700/-	Part Consideration	Paid by the cheque bearing No. 000152 dated November 1, 2016 drawn on Bank of Baroda and a receipt bearing no. 2506 confirming such payment was issued by the Respondent to the Complainant on December 10, 2016


Aditya Deolekar
Advocate for the Complainant

 [Payment No. Dispute]
Respondents' Remark

Reliance Enterprise
Respondent