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**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

Complaint No.CC006000000044437

Laxman Chekkala

.. Complainant

Versus

1.M/s.Nandraj Developers Pvt Ltd

2.Shri.Hemant Kumar Bhanushankar Vyas .. Respondent

MahaRERA Regn No.P51900012122

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

For Complainant – Adv.Nilesh Gala

For Respondents – Adv.Shashikant Kadam

FINAL ORDER

06-03-2019

1. The Complainant who had booked a flat with the respondent /bullder seeks compensation as the respondent failed to deliver possession of the flat as per agreement and for not providing amenities as promised.

2. The complainant has alleged that he booked flat alongwith Vijaya Chekkala and Narasaiya Limbaya, No.C-201 on 2nd floor in building Royal Residency at Lalbaug, Mumbai-400012. The price was agreed at Rs.57,00,000/- Agreement was registered on 13-9-2009. Respondent had agreed to deliver possession on or before 31-3-2011. The respondent has failed to give possession as per agreement though the complainant paid the

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entire consideration of Rs.57,00,000/- The respondent took the payment upfront. The complainant further paid Rs.2,95,900/- towards stamp duty and Rs.30,000/- towards registration charges and Rs.2,69,311/- as extra amount. On 15-3-2013 the respondent gave a general notice that due to unavoidable situation he was unable to get commencement certificate above 5th floor till 15-3-2013. However, he will be getting it by 30-3-2013 and thereafter he will complete the work within 90 days. The respondent has not disclosed the correct situation to MahaRERA including transactions of SREI. Infrastructure creating collateral security. The respondent has not provided amenities as promised. The respondent has continued to misrepresent about occupation certificate. The complainant is therefore entitled for interest @ 18% per annum on the amounts paid to the respondent. He is also entitled to Rs.50,000/- per month towards rental loss.

3. The complaint came up before me on 21-1-2019, Plea of the respondent was recorded and respondent filed written explanation by pleading not guilty. Arguments in the matter were heard on 20-2-2019. As I am working at Pune and Mumbai Offices in alternate weeks this matter being decided now.

4. The respondent has alleged that the complaint is false. It is admitted that Flat No.C-201 was agreed to be sold to the complainant for consideration of Rs.57,00,000/- vide agreement dated 26-9-2009. The date for delivery of possession was 31-3-2011. As per clause-11 in the even of reasons beyond control of respondent possession would be delayed. As per approvals from MCGM respondent was not entitled for CC beyond 5 floors in 'C' building unless 21 flats were handed over to MCGM in 'B'

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building. The respondent obtained OC of the 'B' building in 2010 and ^{on 8-9-2010} requested MCGM to take possession of 21 flats and issue CC of the 'C' building. Vide letter dated 16-9-2011 MCGM asked to submit some documents. Letter about handing over possession was issued on 6-1-2016. CC for additional 5 floors was received on 22-5-2017. The building is almost completed and OC is applied for to SRA. Clause-11(e) was incorporated in the agreement to cover such situation. Date for delivery of possession is extended upto 31-1-2019 by MahaRERA. There was proposal to amalgamate scheme of cess building adjoining to the plot as well as adjoining slum pocket. Therefore the construction got delayed. The complainant has taken possession on 14-3-2018. The complaint therefore deserves to be dismissed.

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

<u>POINTS</u>	<u>FINDINGS</u>
1. Has the respondent committed default in handing over possession of the flat to complainant as per agreement without there being circumstances beyond his control?	Yes
2. Has the respondent made false statement about amenities to be provided to complainant?	Yes
3. Is the complainant entitled for relief sought?	Yes
4. What order?	As per final order

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6-3-19*

REASONS

6. POINT No.1 :- The complainant has placed on record agreement dated 30-9-2009. As per clause-11 date for delivery of possession was 21-3-2011. The respondent is not denying this fact. It is the contention of the respondent that commencement certificate for 'C' building above 5 floors was to be issued by MCGM after possession of 21 flats in 'B' building was given to MCGM. The project appears to be under slum development scheme. However, its mention is not found in the agreement. There is nothing on record to show that complainant was made aware that commencement certificate beyond 5th floor was to be issued after possession of 21 flats was given to MCGM. Infact the flat booked by complainant was on 2nd floor. The Respondent does not deny that the entire consideration amount of Rs.57,00,000/- was received from the complainant. The respondent alleges that there was proposal for merger of adjoining cess buildings for the development. That may have become more profitable project for the respondent. It is alleged that approval of the proposal took time. Handing over possession of 21 flats to MCGM happened on 6-1-2016. The complainant who paid entire consideration amount of Rs.57,00,000/- could not be made to suffer for the delay due to addition of projects and approvals for that purpose. I am therefore of the view that respondent delayed the possession without reasonable justification especially after accepting total consideration from the complainant. I therefore answer point No.1 in the affirmative.

7. Point No.2: The complainant also alleges that he is being deprived of amenities including use of swimming pool. It is the

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contention of the respondent that mention of swimming pool in the agreement is made by mistake.

8. The complainant in para-4 (g) of the complaint alleged that amenities as promised by the respondents have not been provided. The details were not explained in the complaint. However, the respondent in explanation denied having deprived the complainant of amenities. At the argument stage Advocate Gala for complainant submitted that use of swimming pool was promised to the complainant and now he is being deprived of this amenity. Other on the other hand Advocate Kadam for the respondent submitted that mention of swimming pool was made in the agreement by mistake. Use of swimming pool was never intended to be done by the complainant. Mention of swimming pool has been deleted from five of the eight agreements that were executed in respect of this building.

9. It is the third schedule to the agreement which gives list of amenities and facilities to be provided to 'A', 'B' and 'C' wings, At serial No.14 there is a swimming pool and health spa. Now it cannot lie in the mouth of the respondent that the facility of the swimming pool was included in the agreement with the complainant by mistake. The respondent is a professional builder and all legal advice must have been available to him. No evidence is adduced to prove that amenity of swimming pool was included in the agreement with the complainant by mutual mistake. It is true that complainant also did not assert positively that he was being deprived of the facility of swimming pool in the complaint. Now in the plan uploaded on MahaRERA Portal respondent has not included amenity of swimming pool for the flat of the complainant. I therefore hold that complainant is

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being deprived of amenity of swimming pool as promised in the agreement and complainant will be entitled for compensation in that respect. I therefore answer point No.2 in the affirmative.

10. Point No.3 : In view of findings on Point No.1 and 2 as above, complainant is entitled to compensation. The respondent has alleged that complainant has taken possession of the flat allotted on 14-3-2018. Copy of possession receipt is also placed on record. As per agreement possession was promised on 23-1-2011. Complainant will be entitled to claim interest on the amount of Rs.57,00,000/- paid to the respondent from 23-1-2011 to 14-3-2018 under Section 18(1) proviso, as provided under Rule-18 of Maharashtra Rules that is @ 10.70% per annum. In respect of deprivation of the amenities of swimming pool complainant will be entitled to claim Rs.50,000/- from the respondent. I therefore answer point No.3 in the affirmative and proceed to pass following order,

ORDER

1. The respondents to pay interest to the complainant on Rs.57,00,000/- received from complainant from 23-1-2011 to 14-3-2018 @ 10.70% per annum.
2. The respondent to pay Rs.50,000/- to the complainant for deprivation of amenity of swimming pool.
3. The respondents shall pay costs of Rs.20000/- to the complainant.
4. The respondent to pay above amounts within 30 days from the date of this order.

Mumbai
Date : 06.03.2019
(Camp at Pune)


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA