

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC001000000000089.

Nikhil Sardesai

... Complainant.

Versus

M/s. Sanklecha Contructions Pvt. Ltd.

Mr. Anwar Hussain J. Thim

... Respondents.

MahaRERA Regn: P51600005033.

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

Appearance:

Complainant: In person.

Respondents: Adv. Mr. Abhishek Pungliya.

FINAL ORDER

6th September 2019.

The complainant contends that he and his wife Mrs. Sangeeta booked flat no 601, A-1 of respondents' registered project 'Metrozone Athens A1' situated at Pathardi, District Nashik. The respondents agreed to deliver its possession by June 2014 with grace period of six months i.e. by 31st December 2014. The complainant withdraws from the project and claims refund of their amount with interest under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The respondents have filed their lengthy reply. The sum and substance thereof is, they applied for environmental clearance on 09.02.2012 and the authority granted it on 06.02.2015. The agreement for sale is executed on 06.08.2013 and is registered on 13.08.2013. At that time the complainant was informed about the conditions contained in the commencement certificate were to be complied with. They admit that the



possession was to be delivered in mid of 2014 with grace period of six months. However, this date was never meant to be essential for the parties. The complainant was aware of the stoppage of work due to the notice issued by Maharashtra Pollution Control Board. They contend that on 22.03.2013 MPCB issued show cause notice as to why the project should not be closed down. Thereafter it issued stop work notice on 11.07.2013 because environmental clearance was not obtained. The construction was stopped but respondents challenged the notice before the Hon'ble High Court. Thereafter matter was heard by the Principal Secretary who withdrew the proposed directions holding that respondents did not violate the Notification of 2006 (Order of 22.10.2013). The respondents therefore, contend that because of these legal issues the work was halted for the period of 17 to 18 months and it was recommenced from May-June 2015. However, because of the stoppage of the work the purchasers stopped making payments and bookings came to stand still. The construction activity in Nashik City was held up in the year 2016-17 because of the shortage of water. The respondents suffered in November 2016 because of the Government's demonetization scheme and in April 2017 because of the implementation of GST. They completed 94% construction. The common amenities are to be shared by the occupants of the 8 buildings and their construction to the extent of 70% is also made. Despite these facts, the complainant chooses to seek interest on his investment. They were prevented from the sufficient causes for completing the project in time and they are entitled to reasonable extension of time as contended in clause 18 of the agreement. Hence, they request to dismiss the complaint.

3. Following points arise for determination and my findings recorded thereon are as under:

A handwritten signature in black ink, appearing to be 'V.S.', is written over a horizontal line.

POINTS

FINDINGS

- | | |
|--|--------------|
| 1. Whether the respondents have failed to hand over the possession of the booked flat on agreed date? | Affirmative. |
| 2. Whether the respondents are entitled to get extension of time because of the reasons causing delay which were beyond their control? | Negative. |
| 3. Whether the complainant is entitled to get interest on his investment from date of default till getting possession of the flat? | Affirmative. |

REASONS

Failure to deliver the possession of the flat on agreed date.


4. The respondents have admitted that the possession of the complainant's booked flat was to be delivered in mid of 2014 with grace period of six months. This clearly shows that in fact the respondents were to hand over the possession of the flat in June 2014 but by way of grace the complainant agreed to the grace period of further six months. It means that the respondents were bound to hand over the possession of the flat by 31st December 2014 in any circumstance. The learned advocate has made a feeble attempt to make out a case that the date of possession mentioned in the agreement was tentative. I do not accept his submission because the agreement has been executed under the Maharashtra Ownership flat Act 1963, (MOFA). Section 3 thereof provides general liabilities of the promoter. Section 3(2) (f) reads "A promoter, who constructs or intends to construct such block or building or flats, shall- specify in writing the date by which possession of the flat is to be handed over and he shall hand over such possession accordingly". Therefore, the date of possession of the



agreement namely mid 2014 i.e. 30.06.2014 is the real date of possession. So far as the grace period is concerned, it is not to be granted automatically at the volition of the promoter. The agreement as a whole will have to be read. There is clause 18 which speaks about reasonable extension of the date of delivery of possession for the reasons mentioned therein. I find that the intention of the parties disclosed through the terms and condition of the agreement is that, the date of possession can be extended by way of grace period of six months at the most. I am supported to take this view by section 8 (b) of MOFA to which I may refer to later. Admittedly the respondents have not handed over the possession of the flat even in December 2014. Hence, the complainant has proved that the respondents have failed to deliver the possession of the flat on agreed date.

Reasons of Delay:

5. The respondents have referred to causes of delay as specified in their reply and therefore, they contend that those reasons were beyond their control and hence, the period to hand over the possession of the flat should be extended. In this context it is necessary to look at Section 8(b) of Maharashtra Ownership Flats Act (MOFA). It provides that if the promoter for reasons beyond his control is unable to give possession on the date specified or the further agreed date and the period of three months thereafter or further period of three months if those reasons still exist, then in such case the promoter shall be liable on demand to refund the amounts of the allottee with simple interest at the rate of 9% from the date the promoter received the sums till the amount and interest thereon is refunded. Section 88 of RERA allows MOFA to apply to the facts of the case also since the provision of Section 3 & 8(b) referred to above are not inconsistent with the provisions of RERA. In Neelkamal Realtors Suburban Pvt. Ltd.-V/s-Union of India - 2017 SCC online Bombay 9302, the Division Bench of Hon'ble Bombay High Court has observed that the promoter having sufficient experience in the open market, is expected to have fair



assessment of the time required for completing the project. The respondents were aware of the various conditions imposed by the municipal corporation mentioned in commencement certificate which were to be complied by them. They were aware of stoppage work notice given by MPCB when they entered into agreement with the complainant. Despite the knowledge of all the hurdles which they were likely to face, they agreed to deliver the possession of the flat by mid-2014. The agreement has been executed on 06.08.2013. It means that they promised to hand over the possession of the flat within ten months of the agreement. It is unfair on the part of the respondents to make capital of the compliance of legal requirements for seeking the extension of time. In spite of having knowledge of all those things they promised to deliver early possession of the flat by end of mid 2014 just to lure the complainant for booking their flats. Such practice needs to be deprecated with firm hand. In Neelkamal Realtors the Hon'ble Bombay High Court has held in the context of the date of possession that the courts/authority cannot rewrite the agreement. From the date of possession mentioned in the agreement the delay is to be counted. Even after taking into consideration the reasons assigned by the respondents causing delay in completion of the project and by holding them genuine, I find that as per Section 8 (b) of MOFA this period cannot be extended beyond six months. There is delay of more than six months in this case and hence the complainant is entitled to get simple interest at prescribed rate from the date of default till getting possession of the flat with OC.

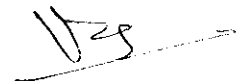
6. The learned advocate of the respondents submits that the observations of the Hon'ble High Court contained in the judgement of Neelkamal Realtors' case are not binding on this Authority they being obiter-dicta. I have gone through the relevant portion of the judgement passed by the Hon'ble High Court. It has explained the scope, propriety, extension of RERA while examining its constitutionality. I find the



observations of Hon'ble High Court referred to above operate as ratio decedendi and hence they are binding.

7. The learned advocate of the respondents has relied upon S. Bramhanand-v/s K.R. Muthugopal, AIR 2006 SC 40. I find that the issue regarding the starting point of limitation in a Suit for specific performance of the contract has been decided in this case. Therefore, this case is not applicable to the facts of the case on hand. Reliance has been placed by him on Keshavlal Lallubhai Patel-v/s-Lalbhai Trikumblal Mills Ltd., AIR 1958 SC 512 wherein it is held that the conditions mentioned in the proposal asking the extension of time were so vague and uncertain that it was not possible to ascertain definitely the period for which the time for the performance of the contract was really intended to be extended. In such case, the agreement for extension must be held to be vague and uncertain and as such vide under Section 29 of Indian Contract Act. In this case also there is nothing placed by the respondents to show that the complainant view to express consent for extending the time/date of possession. Hence, this case also will not help the respondents. For the same reason Section 62 of the Contract Act will not come into play in this case.

8. The respondents' advocate submits by relying on Neelkamal Realtors' case that the relief can be moulded after taking into consideration the fact that the construction activities were obstructed because of stoppage of work by MPCB. In this context when I look at the judgment of the Hon'ble High Court, I find that in the context of Section 6 regarding the extension of the registration and in the context of Section 4 (2)(1)(C) as well as Rule 6 (a) of Maharashtra(Registration) Rules 2017 the Hon'ble High Court has observed in Para 100 of the Judgement that the provision permitting exclusion of time consumed due to stay or injunction orders from any court of law or tribunal, competent authority, statutory authority or due to such mitigating circumstances as may be considered by the Authority must be re-looked by the State Government and directed to



undertake fresh survey of rules. This shows that on account of the work stoppage notice/order issued by MPCB, the period of stoppage of work cannot be considered. However, in permissible cases the discretion is given to the Authority to mould the relief. I find that Section 18 of RERA entitles the allottee who continues with the project to claim interest on his investment for every month of delay till getting the possession of an apartment. No discretion is left to the Authority in this case to mould the relief provided by RERA.

Complainant' entitlement:

9. The respondents have produced payment statement marked Exh. 'A' showing that the complainant has paid respondents Rs. 43,28,786/- towards the consideration of the flat. Respondents have admitted that they received this amount before the agreed date of possession December 2014. Therefore, respondents are liable to pay simple interest at prescribed rate on this amount from 01.01.2015 till handing over the possession of the flat with OC. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.4%. The complainant is also entitled to get Rs. 25,000/- towards the cost of the complaint. Hence, the following order.

ORDER

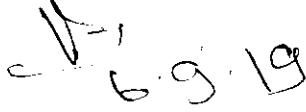
Respondents shall pay simple interest at the rate of 10.4% per annum on complainant's amount of Rs. 43,28,786/- from 01.01.2015 till getting possession of the flat with O.C.

Respondents shall pay the complainant Rs. 25,000/- towards the cost of the complaint.

The parties are permitted to adjust their claims and pay the balance if due.

Mumbai.

Date: 06.09.2019


(B. D. Kapadnis)
Member II,
MahaRERA, Mumbai.