

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

COMPLAINT NO: CC006000000054774.

Ketan Patel
Rekha Ketan Patel

... Complainants.

Versus

M/s Ruchi Priya Developers Pvt.Ltd.
Yogesh Narmadaprasad Varma
Kiran Harsukhlal Hemani
Priyank Kiran Hemani
(Uptown Wing B)

... Respondents.

MahaRERA Regn: P51800006008.

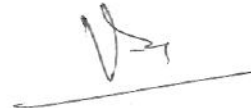
Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. S.R.Mamania.
Respondents: Adv. Jatin Lalwani.

**FINAL ORDER
20th February 2019.**

The complainants contend that they booked flat no. 1001 & 1002 on the 10th floor in respondents' registered project 'Uptown'- Wing B situated at Kandivali (East), Mumbai. They allege that the respondents falsely represented through their advertisement that the possession would be given by December 2018 but now they have revised the date of completion of project to 2023 and they also represented that their project is viable but they do not have requisite permissions thereby contravened Section 12 of RERA. Hence, complainants claim refund of their amount with interest under Section 12 of RERA.



2. The respondents have pleaded not guilty and they have failed to file their reply. However, their learned advocate submits that because of certain legal issues which are not under the control of respondents, they have revised the date of completion of project to 31.12.2023. Respondents have repaid the amount of almost 150 allottees, therefore now they are not financially able to refund the complainants' amount in lump sum. Therefore, they seek the time of 18 months for refunding the complainants' amount.

3. Following points arise for determination and I record my findings thereon as under:

POINTS

FINDINGS

- | | |
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| 1. Whether the respondents through their false advertisement represented to the complainants that they shall handover the possession of the flat by December 2018? | Affirmative. |
| 2. Whether the respondents through their false advertisements represented to the complainant about viability of the project in the absence of requisite approvals? | Affirmative. |
| 3. Whether complainants are entitled to get refund of their amount with interest? | Affirmative. |

REASONS

4. There is no dispute on the point that the complainant booked the flats in the respondents' project relying on representation of the respondents regarding the viability of the project because of the advertisement which has been placed on record by the complainants. The allotment letter also shows that the respondents' project was viable and would be completed as scheduled. The complainants have brought to my notice that on 31.07.2015, the Collector directed the SRA to issue stop-work notice. On 14.08.2015, the SRA issued it. On 11.09.2015, the matter was



taken in Appeal but Revenue Minister granted Interim Stay on 14.09.2015 and vacated it on 30.10.2015. The Collector directed its subordinate staff on 10.09.2016 to take possession of the vacant land along with rehab building and the matter was taken before the Additional Commissioner, Konkan Division who dismissed the Appeal on 31.03.2017. Thereafter the matter is taken to the Hon'ble High Court in Writ Petition (L) No. 1253 of 2017 and on 04.05.2017 the Collector is restrained from taking coercive action against respondents, pursuant to the Collector's order dated 25.04.2016. The complainants have also brought to my notice that the declaration given by the respondents showing that they have not received commencement certificate for 'Uptown Wing B'. After going through these documents, I find that the complainants have proved that the respondents made false representation of viability of their project, though their title to the land was not clear and though, they did not have the commencement certificate for constructing the project.

5. The complainants have also brought to my notice an advertisement of the respondent's project showing that the project would be completed by December 2018. The respondents have mentioned on their web page while registering the project that the proposed date of completion was 31/12/2018. The declaration given by the respondents shows that they have not received commencement certificate for 'Uptown' - Wing B. Therefore, the complainants have proved that the respondents' statement regarding completion of project by 31.12.2018 has proved to be false. Therefore, I hold that the complainant has proved that the respondents have contravened Section 12 of RERA. The complainants want to withdraw from the project and therefore they are entitled to get refund of their amount with simple interest at prescribed rate which is 2% above SBI's highest MCLR 8.55%. The respondents have not disputed the fact that they have received Rs.1,00,000/- on 31.03.2015, Rs. 2,48,960/- on 15.04.2015 and



Rs. 3,48,960/- on 08.05.2015 for flat no. B-1001. They received Rs.1,00,000/- on 31.03.2015, Rs. 2,48,960/- on 15.04.2015 and Rs. 3,48,960/- on 08.05.2015 for flat no. B-1002. The complainants are entitled to get refund of the amount with interest from the date of payment till their refund. The respondents have admitted their liability to refund the amount with interest. However, amount of many allottees of this project have been fully and partly paid. Therefore, they contend that now they are not financially able to refund the complainants' amount in lump sum and seek the period of 18 months for its repayment. Respondents are ready to refund the complainants' amount but because of the financial crunch it is necessary to give them three months' time to pay the complainants' amount. Hence, the following order.

ORDER


The respondents shall pay the complainants Rs. 13,95,840/- with simple interest at the rate of 10.55% per annum from the date of payments mentioned in para-5 of the order till the amount is refunded.

The respondents shall pay the complainants Rs. 20,000/- towards the cost of the complaint.

The respondents are directed to refund the amount in three months in equal instalments starting from 30th day of this order, in the case of single default, all the three instalments would be payable at once.

Mumbai.

Date: 20.02.2019


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