

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

Complaint No.CC006000000023891

Chalapathi Rao,
101, Anandnagar,
Dahisar (East)
Mumbai-400 068.

.. Complainant

Versus

Imperium Buildcon LLP
4th floor, Saheb Building,
195, D. N. Road, Fort,
Mumbai-400 001.

.. Respondent

Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer

Appearance :-
Complainant : Adv. Avinash Pawar
Respondent : Adv. Abir Patel

FINAL ORDER
(05.02.2019)

1. The Complainant, who had booked a flat with the Respondent/Builder, has alleged that Respondent has not delivered possession as per the agreement. Neither details of the transaction, nor reliefs claimed are given in the proforma complaint. When the matter came up before Hon'ble Chairperson on May 30, 2018,

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Complainant claimed that he wants to withdraw from the project.

2. From the agreement, it becomes clear that Complainant and his wife Poonam booked flat No. 501 in 'C' building in "VINAY UNIQUE IMPERIA" AT Virar, in Thane District. Agreement value was Rs. 31,05,000/-. There is tri- partite agreement between Complainant, his wife, Respondent and HDFC Ltd, for sanction of loan of Rs. 26,57,000/-. Agreement between Complainant and Respondent, dated 4th May, 2013 clause 8 gives the date of possession as 31st December, 2015. At the argument stage it is alleged that Complainant has so far paid Rs. 30,55,000/-.
3. The matter came up before Hon'ble Chairperson on May 30, 2018 and it came to be transferred to the Adjudicating Officer. On 17.07.2018 matter came to be adjourned for plea of the Respondent and his written explanation to 29.08.2018. On 29.08.2018 Respondent filed written explanation and his plea was recorded. On 23.10.2018, Respondent sought adjournment and again on 31.11.2018 Respondent sought adjournment. Finally arguments were heard on 19.12.2018.
4. Respondent has denied the claim of Rs. 37,97,554/- preferred by the Complainant. Payment of Rs. 29,12,750/- to the Respondent is admitted but Rs.

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31,050/- is said to have been VAT amount, Rs. 95,945/- Service Tax. As per agreement, the Respondent was liable to pay Pre-EMIs up to June, 2016. Therefore, Respondent is not liable to pay Rs.73,625/-. It is alleged that the flat is completed in all respects. Since Agreement was dated 4th May, 2013, this complaint is not tenable. Respondent is entitled for deductions in case of termination. HDFC Ltd. which has paid 90% of the consideration, is a necessary party to this proceedings. The building was part of the larger layout given to HDIL. Initially CIDCO and thereafter Vasai-Virar Municipal Corporation were designated as planning authority for the area. The date of possession as 31st December, 2015 is subject to force majeure. Respondent experienced hurdles in getting permanent electric supply, procurement of consent to operate, procurement of CFO NoC. The building was completed in time, but flat could not be handed over due to the reasons beyond the control of the Respondent. Respondent has invested large sums of money and undertaken development of underdeveloped area like Virar. All the monies paid by Complainant have been utilized towards construction of the building. The complaint therefore, deserves to be dismissed.

5. On the basis of rival contentions, following points arise for my determination. I have noted my findings thereon for the reasons stated below.

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POINTS**FINDINGS**

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|-----|---|---------------------------|
| (1) | Has the Respondent failed to deliver possession of the flat to the Complainant as per agreement, without there being circumstances beyond his control ? | In the Affirmative |
| (2) | Is the Complainant entitled to the reliefs claimed ? | In the Affirmative |
| (3) | What order ? | As per final order. |

REASONS

6. **POINT Nos. 1 and 2** :- Heard Adv. Avinash Pawar for the Complainant and Adv. Abir Patel for the Respondent. Both made submissions on expected lines. Shri Patel submitted that as per clause 52 of the agreement, the agreement was subject to provisions of Maharashtra Cooperative Societies Act, 1960 and Maharashtra Ownership Flats (Regulation of the Promotions of Construction, Sale, Management and Transfer) Act, 1963. Now it is well settled that RERA is applicable to all ongoing projects, therefore, objection raised by Mr. Patel cannot be accepted. Also his submissions that the complaint is time barred, cannot be accepted because it is an ongoing project. Shri Patel has submitted that only 10% amount has been

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paid by the Complainant and rest by the bank. In the agreement, there are 10% cancellation charges. Under clause 3 Pre EMIs were to be paid for 22 months. The consent to operate from MPCB did not come and also NoC from Fire Department. Respondent gave application for electric connection in 2015 but electric connection is not received.

7. As stated earlier, the proforma complaint does not give the necessary details. Now it is alleged that Complainant has paid Rs. 28,39,300/- out of which, Rs. 23,91,300/- was the HDFC disbursement. In the agreement between Complainant and Respondent, dated 4th May, 2013 price of the flat is Rs.31,05,000/-. As per clause 8, the date of delivery of possession is 31st December, 2015, which means in 2½ years since execution of agreement. Tri-partite agreement is dated 02.06.2013. Complainant was to mortgage all rights, title, benefits in the apartment. The builder had undertaken the liability of making payments up to 31st March, 2015.
8. The contention of Respondent is that delay in delivery of possession has occurred due to the reasons beyond his control. It is alleged that the building is part of large layout owned by HDIL, which was developing the area at villages Chikal Dongare in Virar. The Respondent was well aware of these facts, when he

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entered into an agreement with the Complainant. The Respondent alleges that construction work is completed, but does not give the date of completion of the construction work. It is alleged that despite all planning related hurdles are bound to cause delay in completing work. The Respondent is a professional builder and must be knowing the time required for obtaining the various permissions. The date of delivery of possession is fixed by the Respondent^{and} is accepted by the Respondent after taking into consideration all the relevant circumstances. Now Respondent cannot justify the delay on the ground that requisite permissions from Govt. Offices ~~do~~^{don't} not come in time. It is alleged that electric supply has not been granted. Application for that purpose was filed only on 9th Feb, 2015. It is alleged that setting of a transformer is necessary. The Respondent was well aware of this situation before entering into an agreement with the Complainant. Then consent to operate from Pollution Control Board is said to have been applied in Feb. 2016 as HDIL failed to apply for it. There may be dispute with HDIL, but that cannot affect rights of the flat purchaser. Then NOC from Chief Fire Officer was applied for on 12th August, 2016. No objection was granted on 22nd August, 2018. Clearly, the delay is occurred because of the Respondent and the Complainant cannot be made to suffer for that reason. I therefore, hold that Respondent failed to deliver the possession as per

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agreement without there being circumstances beyond his control. I therefore, answer Point No.1 in the affirmative.

9. In view of my finding on Point No.1 as above, the Complainant will be entitled to withdraw from the project and refund of the amount paid to the Respondent. The complaint has been silent about the amount paid to the Respondent. Now some receipts have been placed on record. There is Receipt for Rs. 51,000/-, dated 11.04.2013, Rs. 3,97,000/-, dated 25.04.2013. The Complainant appears to have paid Rs. 4,48,000/- from his pocket and the rest is HDFC disbursement. The Complainant will be therefore, entitled to refund of Rs. 4,48,000/- except the stamp duty, which can be refunded as per the rules, if included. The Respondent shall repay the HDFC loans as per the agreement. I therefore, answer Point No.2 in the affirmative, and proceed to pass the following order.

ORDER


- (1) The Complainant is allowed to withdraw from the project.
- (2) The Respondent to repay Rs. 4,48,000/- to the complainant except the amount of stamp duty, if included in it, which is refundable as per the

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rules, together with Interest @ 10.70% p.a. from the date of payments till final realization.

- (3) The Respondent also to pay the outstanding amount from HDFC loan sought by the Complainant as per tri- partite agreement.
- (4) The Respondent to pay Rs.20,000/- to the Complainant as cost of this complaint.
- (5) The Complainant to execute cancellation deed at the cost of the Respondent.
- (6) The Respondent to pay the aforesaid amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Dated :- 05/02/2019


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA