

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO. CC005000000010377

Shailesh Sudhakar Pardikar ... Complainant.

VERSUS

1. Sigma One Shilp Ventures
2. Narayan Ashok Bharekar
3. Kapil Vilas Gandhi
4. Shreekumar Mukund Kasat
5. Chandrakant Tukaram Bharekar ... Respondents.

MahaRERA Regn:- P52100009637

Complainant: In person.

Respondents: Represented by Mr. O.S. Tilekar, Adv.

COMPLAINT NO. CC005000000010381

1. Parag Jain
2. Sonam Jain ... Complainants.

VERSUS

1. Sigma One Shilp Ventures
2. Narayan Ashok Bharekar
3. Kapil Vilas Gandhi
4. Shreekumar Mukund Kasat
5. Chandrakant Tukaram Bharekar ... Respondents.

MahaRERA Regn:- P52100009637

Complainant: In person.


Respondents: Represented by Mr. O.S. Tilekar, Adv.

COMPLAINT NO. CC005000000010389

Gaurav Uday Joshi ... Complainant.

VERSUS

1. Sigma One Shilp Ventures
2. Narayan Ashok Bharekar
3. Kapil Vilas Gandhi



4. Shreekumar Mukund Kasat
5. Chandrakant Tukaram Bharekar ... Respondents.

MahaRERA Regn:- P52100009637

Complainant: In person.

Respondents: Represented by Mr. O.S. Tilekar, Adv.

MahaRERA Regn:- P52100009637

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

Final Order.

8th January 2018.

The complainants have been seeking the refund of their amount with interest and/or compensation from the respondents under section 18 of Real Estate (Regulation and Development) Act, 2016, (RERA), as the respondents have failed to deliver the possession of their flats on agreed date.

Pleadings of complainants.

2. Mr. Shailesh Pardikar booked a flat no. C-305, Mr. Parag Jain and Mrs. Sonam Jain have booked flat no. B-102 and Mr. Gaurav Joshi booked a flat bearing no. B-204 in the respondents' La Cabana project situated at village Susgaon, District Pune. The respondents agreed to deliver all these flats within the period of 30 months from the actual commencement of work at site. The respondents themselves have contended in their reply that the development activities started on 01.01.2015 and therefore, the respondents agreed to deliver possession of these flats on or before 30th June 2017. However, they have failed to hand over the possession of these flats on the agreed date, hence, the complainants have been claiming their amount with interest and/or compensation under section 18 of RERA.



Defence of respondents.

3. The respondents have pleaded not guilty and they have filed their reply. They contend that the Assistant Director of Town Planning recommended their building plan on 30.10.2012 and thereafter, the Collector, Pune granted permission to use the land for non-agricultural purpose and approved the construction plan on 05.02.2013. Thereafter, they got the approval of the revised plan on 31.12.2014 and started development activities on 01.05.2017. Therefore, they contend that since the development work commenced at site on 01.05.2017, the respondents' contractual liability to hand over the possession of the flats to the complainants was on or before 30.06.2017. According to them, the Town Planning Authority came to be entrusted with Pune Metropolitan Regional Development Authority. They completed the parking slab of C and D buildings in May 2015 and that of A & B buildings in October 2015. They received plinth checking certificate of C & D buildings on 17.03.2016 and that of A & B buildings on 18.05.2016. They have mentioned while registering the project that the project shall be completed by 31.03.2018, therefore they contend that the complaints are pre-matured. They contend that the project is delayed because of the reasons beyond their control. According to them, since the market is falling, the complainants want to withdraw from the project. The respondents have further contended that the complainants themselves are claiming refund of their amount and therefore, they are entitled to forfeit a part of their amount as per clause-2 (f) of the agreement. Hence, they request to dismiss the complaints.

4. Following points arise for consideration and I record findings thereon as under.



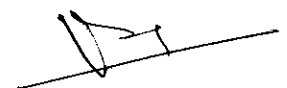
POINTS.

FINDINGS.

- | | | |
|----|--|--------------|
| a. | Whether the respondents are failed to deliver the possession of the complainants' flats on agreed date? | Affirmative. |
| b. | Whether the respondents prove that they were prevented from completing the project in time because of the reasons which were beyond their control? | Negative. |
| c. | Whether the complainants are entitled to get refund of their amount with interest? | Affirmative. |

REASONS

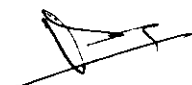
5. Parties have entered into the agreement for sale in respect of complainants' booked flats. On perusal of those agreements it becomes clear that the respondents have agreed to deliver the possession of the booked flats within 30 months from the date of commencement of construction work at site. The complainants brought to my notice that in the agreement itself the respondents have mentioned that the "*promoters have accordingly commencement of construction of said building/s, in accordance with the plans sanctioned by the Collector, Pune vide order No. PMA/NA/SR/414/2014 dated 31.12.2014*". The agreements for sale have been executed in favour of Mr. Parag Jain and Mrs. Sonam Jain on 23rd June 2016, in favour of Mr. Shailendra Pardikar on 23rd March 2015 and in favour of Mr. Gaurav Joshi on 29th April 2015. The respondents have mentioned in their reply that the construction activities on site started on 01.01.2015. So from 01.01.2015 within the period of 30 months they were required to hand over the possession of the complainants' flats. This date comes to 30th June 2017, hence, I hold that the respondents have agreed to deliver the possession of the complainants' flats on 30.06.2017. It is admitted fact that



the respondents have not delivered the possession of these flats to the complainants on the said date. On the contrary, they have mentioned that the proposed date of the completion of the project was 01.11.2017 and revised date of completion is 31.03.2018. In this context, Hon'ble Bombay High Court has held in Nilkamal Realtors Suburban Pvt. Ltd. - v/s - Union of India in Writ Petition No. 2737 of 2017 in Ordinary Original Civil Jurisdiction that the Court cannot re-write the contracts of the parties, therefore, the dates specified in the agreements for sale shall be deemed to be agreed dates of possession for the purpose of Section 18 of RERA. Hence, I hold that the respondents have failed to deliver the possession of the flats on the agreed date as their project is delayed.

REASONS FOR DELAY:

6. The respondents have contended that on 31.12.2014, the Collector, Pune sanctioned the revised plan. According to them the work of construction up to parking slab of 'C' Building was completed in May 2015 and that of B building in October 2015. The letters for checking the plinth were issued on 26.05.2015 & 08.10.2015 respectively. But the plinth checking certificate of 'C' building has been received on 17.03.2016 and of 'B' building has been received on 18.05.2016, this caused the delay which was beyond their control. In this context, Hon'ble Bombay High Court has observed in the case of Nilkamal Realtors Suburban Pvt. Ltd. - cited Supra that the promoter having sufficient experience in the open market, is expected to have a fair assessment of time required for completing the project. Therefore, the promoters they being experienced in the field having expertise in dealing with the official matters, have to take the proper decision regarding the time likely to be taken by them for completion of their project, while booking the flats and promising the people. Therefore, respondents cannot take somersault and blame the system. The respondents have also mentioned that the planning authority changed and went to PMRDA but at the time no proposal of their project



was pending before the said authority which got delayed because of the said change. Therefore, I do not find that there were reasons causing delay which were beyond the control of the respondents.

Entitlement of complainants.

7. The respondents have been contending that since the complainants have been claiming refund of their amount, they are entitled to forfeit Rs. 50,000/under clause-2(f) of the agreement. This clause provides that 'in the event of the agreement being terminated by the purchasers for any reason whatsoever, the promoter shall be entitled to retain/withhold/forfeit the minimum amount of Rs. 50,000/- from and out of amount so far then paid by the purchaser to the promoter.' Complainants of their own are not terminating the agreements. The respondents themselves have defaulted in handing over the possession of the booked flats on agreed date. Section 18 of RERA confers option upon them to withdraw from the project and claim their amount with interest as the respondents have failed to deliver the possession of their flats on agreed date. So clause-2(f) of the agreement has no role to play in these cases. I hold the complainants are entitled to get back their full amount with interest.

8. When the promoter makes the default in delivering the possession of the flats on agreed date, he becomes liable to refund all the amount paid by the allottee. He also becomes liable to reimburse the allottee all the expenses incurred by him relating to the transaction such as the payment of taxes, stamp duties and ancillary expenses. So, from this point of view I find that except the expenses incurred by the complainants in respect of complaints filed in MahaRERA, the amount of rent and the Misc. expenses, and interest paid to banks, they are entitled to get all the amount mentioned by him in their statements marked as Exhibit-A of their complaints.



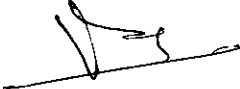
9. Section 18 of RERA allows the interest at the prescribed rate. The rules prescribe the rate of interest shall be of MCLR of SBI + 2%. The current MCLR of SBI is 8.05%, hence complainants are entitled to get their amount with the interest at the rate of 10.05% from the date of their payments. Interest at this rate is compensatory in nature, hence complainants are not entitled to get any compensation. However, they are also entitled to get Rs. 20,000/- towards the cost of the complaints. Hence, the following order.

ORDER

1. The respondents shall pay the complainants the amount mentioned in the statements marked at Exhibit- A (except the bracketed) as mentioned in paragraph 9 of this order with interest at the rate of 10.05% from the date of their receipt. Exhibit- A shall form the part of this order.
2. The respondents shall pay Rs. 20,000/- towards the cost of each complaint to the respective complainants.
3. The charge of aforesaid amount shall be on the flats booked by complainants till their repayment.
4. Complainants shall execute deed of cancellation of agreements on satisfaction of their claims at respondents' cost.

Mumbai.

Date: 08.01.2018.


8.1.18

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

"LA-CABANA" - (B-204) Ext A. CC/005/10389

Date	Type	Particulars	Payee	Cheque No	Bank Name	Amount
30/01/15	Initial Payment	Booking Amount	Self	357972	SBI	200,000
	Service Tax	Service tax amount for booking		357973		6,180
30/01/15	Demand Payment	15% of Agreement (Part payment)	Self	357975	SBI	200,000
	Service Tax	Service tax amount for 15% part payment		357976		6,180
10/04/15	Demand Payment	15% of Agreement (Part payment)	Self	357977	SBI	88,000
30/04/15	Demand Payment	Installment of demand from builder - Plinth	Bank Loan	60337	P.N.B.	602,422
15/05/15	Agreement Cost	Plinth/Raft Disbursement	Bank Loan	60534	P.N.B.	21,335
	Agreement Cost	Stamp Duty				181,800
	Agreement Cost	Registration & Document Fee				31,560
	VAT	VAT for Stamp Duty				36,347
27/10/15	Installment	Installment of demand from builder - First Slab	Bank Loan	934355	P.N.B.	254,431
	Service Tax	Service tax amount for First Slab				8,905
12/01/16	Installment	Installment of demand from builder - Second Slab	Bank Loan	336166	P.N.B.	254,433
	Service Tax	Service tax amount for Second Slab				9,286
09/02/16	Installment	Installment of demand from builder - Third Slab	Bank Loan	448305	P.N.B.	254,432
	Service Tax	Service tax amount for Third Slab				9,223
29/02/16	Installment	Installment of demand from builder - Fourth Slab	Bank Loan	448745	P.N.B.	254,432
	Service Tax	Service tax amount for Fouth Slab				9,223
25/04/16	Installment	Installment of demand from builder - Brick Work	Bank Loan	450061	P.N.B.	545,211
	Service Tax	Service tax amount for Brick Work				19,764
03/11/16	Installment	Installment of demand from builder - Internal Plaster	Bank Loan	85128	P.N.B.	165,155
	Service Tax	Service tax amount for Internal Plaster				7,432
09/12/16	Installment	Installment of demand from builder - Internal Plaster	Self	7563	ICICI Bank	191,388
	Service Tax	Service tax amount for Internal Plaster				8,612
16/01/16	Installment	Installment of demand from builder - Internal Plaster	Bank Loan	86811	P.N.B.	188,669

29/04/15	Lawyer's fee	Lawyer's fee at the time of Agreement Registration	Self			5,000
16/05/15	Bank Loan	PNB Loan Document Handling	Self			1,000
16/05/15	Bank Loan	PNB Loan Filing Fee	Self			21,236
25/04/15	Bank Loan	PNB Home Loan/Property Insurance	Bank Loan	60336		50,000