BEFORE THE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: CC006000000000369

Pradnya Nikhil Sable ... Complainant.

Versus

1) Kambar Contructions ... Respondents.

MahaRERA Regn: **P51700012252**

Coram: Hon'ble Shri B.D. KAPADNIS.

(Member & Adjudicating Officer)

23th November 2017

Final Order

The Complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development), Act 2016 (hereinafter referred to as RERA) for refund of the monies paid by her towards the consideration of flat No. 404, Woodshire Building of Village Mahili in Ambivali(E), Tal. Kalyan, Dist. Thane.

2. The Complainant contends that she and her husband booked the flat and the Respondents executed the Agreement of Sale agreeing therein that they shall deliver the possession of the flat on or before December 2015 but they failed to deliver its possession till the date of the complaint, though 95% payment of the consideration has been made.

3. The Respondents have filed their reply after pleading not guilty. They have contended that the local goon namely Mr. Santosh Gondhale demanded ransom when they started construction, not only that he compelled them to purchase the building materials and hire trucks, water tankers through him at exorbitant cost. He also started to demand his share in the constructed buildings. He shot dead a fellow developer when that

developer did not succumb to his illegal demands. Therefore, the Respondents were under tremendous pressure and had to stop construction work for some time. They did not get any help from Police and Public Authorities, though the offence under Maharashtra Control of Organized Control Act came to be registered against Mr. Santosh Gondhale. He was not arrested by Police as Mr. Gondhale had patronage of Political Leaders. Finally, he was arrested in August, 2016 and the Respondents could start the construction work within next 60 days. They contend that the project would be completed at the end of 2018. Therefore, they submit, this reason was beyond their control because of which they could not complete the project on time.

4. Whether the Complainant is entitled to get back his amounts with interest or compensation on Respondents' failure to deliver the possession of the flat on the agreed date? is the only point for my consideration. I answer it in affirmative for following reasons.

Delayed project.

5. There is no dispute between the parties that the Respondents agreed to deliver the possession of the Complainant's flat on or before December 2015 and they could not deliver the possession thereof as the project is still incomplete. Hence, the Complainant has proved that the Respondents have failed to deliver the possession of the flat on the day specified in the agreement.

Return of the amounts with Interest.

6. Section 18 of RERA lays down that when the promoter fails to complete an apartment, plot or building by the date specified in the Agreement for Sale, then the allottee gets the option to withdraw from the project and he is entitled to claim return of the amounts paid by him to the promoter with interest, as may be prescribed and in adequate cases compensation also. In view of this provision, the Complainant has

exercised his option to withdraw from the project and now, he claims the amounts paid to respondents.

7. So far as the payments made by the Complainant are concerned, the Respondents have not disputed their receipt. The Complainant has submitted the statement showing that he paid Rs., 20,000/- on 18.05.2013 towards booking amount. He paid Rs. 31,000/- on 4th June 2013. Thereafter on 18.06.2013 he paid Rs. 2,83,979/-, he paid Rs. 31,300/- on 03.07.2013 and Rs. 88,678/- on 27.11.2013. The Respondents collected Rs. 11,798/- on 29.09.2014 from the HDFC Bank which sanctioned loan to the complainant. The Respondents have received Rs. 2,31,700/- from the complainant on 26.03.2015 towards the Stamp Duty and Registration Charges. They collected Rs. 29,76,700/- from the I.C.I.C.I Bank on 30.04.2015, the amount of Home Loan. She is also entitled to get Rs.11,798/- towards HDFC loan processing charge. The complainant has spent Rs.3,371/- as I.C.I.C.I loan processing fees on 01/12/2014. She had to make payment of Rs.2,31,700/- towards stamp duty and registration fees. The complainant is entitled to get these amounts back from the Respondents.

8. Section 18 of RERA is retroactive. It specifies that the promoter is liable to refund the amounts with interest prescribed under the Act. The Rules framed under the Act have prescribed that the rate of interest would be marginal cost of lending rate of SBI which is currently 8.15 % + 2 %. Thus, the Complainant is entitled to get the interest on these amounts at the rate on 10.15 % from the respective dates of their payment mentioned in the above paragraph.

9. The Complainant is entitled to get Rs. 20,000/- towards cost of this complaint.

10. The Complainant claims Rs. 1,61,440/- towards rent paid by him from January 2016 till the date of the complaint. I find that since the Complainant is getting the interest on his investment, he is not entitled to claim the rent. Complainant claims compensation on account of the mental

pain and the loss of opportunity. In this context, I have taken into consideration a mitigating circumstance that the Respondents have proved that they suffered at the hands of the local goon and project is delayed to some extent because of his activities. Therefore, this is not the fit case for granting compensation. Hence, following order.

ORDER

1. The Respondent shall pay the amounts mentioned in Paragraph 7 of this order with interest at the rate of 10.15 percent per annum from their respective dates of payment till they are paid.
2. The Respondents shall pay Rs. 20,000/- towards the cost of complaint.
3. On satisfaction of the claim, the complainant and her husband shall execute the deed of cancellation of booking. Respondents shall bear its cost.
4. Charge of this award shall be on flat No. 404, Woodshire Building of Village Mahili in Ambivali(E), Tal. Kalyan, Dist. Thane till its satisfaction.

23.11.17

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

Mumbai
Date: 23.11.2017.

BEFORE THE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: **CC006000000000369080**

Pradnya Nikhil Sable ... Complainant.

Versus

Kambar Constructions ... Respondents.

MahaRERA Regn: **P51700012252**

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

ORDER FOR RECOVERY UNDER SECTION 40(1) FOR NON-COMPLIANCE OF THE ORDER DATED 23.11.2017.

The complainant has filed his application to complain that the respondents have not complied with the order passed by this Authority on 23.11.2017. The Respondents have preferred an Appeal No. AT006000000000145 against this order and the appeal is dismissed. Even thereafter the respondents have not complied with this order.

2. The respondents have not appeared despite the notice, therefore, it is necessary to issue the warrant under Section 40(1) for recovery of the awarded amount as the arrears of land revenue addressed to the Collector, Thane.

3. Issue warrant under Section 40(1) of RERA to the Collector, Thane, for recovery of awarded amount with a request to recover it as arrears of land revenue and pay the same to the complainant.

11-5-'18

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

Mumbai.
Date: 11.05.2018