

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY MUMBAI

COMPLAINT NO: CC006000000056439

Mr. Khalid Ahmed

Mrs. Ezhar Parveen

... Complainants.

Versus

Reliance Enterprises.
(Hill View)

..... Respondents.

COMPLAINT NO: CC006000000056450

Akash Tekriwal

... Complainant.

Versus

Reliance Enterprise.
(Hill View)

..... Respondents.

MahaRERA Regn: P51800005482

Coram:

Hon'ble Shri B.D. KAPADNIS,
Member & Adjudicating Officer.

Appearance

Complainants: Adv. Aditya Deolekar.

Respondents: Adv. Divya M. Chopra

Final Order.

27th November 2018.

Pleadings of complainants.

The complainants have filed this complaint u/s. 18 of Real Estate Regulation and Development, Act 2016 (RERA). They contend that Mr. Khalid Ahmed and Mrs. Ezhar Parveen booked Apartment No. 1303, B-Wing. The respondents agreed to deliver the possession of



the flat by December 2017. Mr. Akash Tekriwal booked flat no. 1502, B-wing of Respondent's Hill View project situated at Chembur. The respondents agreed to deliver the possession of the flat by December 2015. These apartments are in the sale component of the Respondents' SRA project. The Agreements for Sale to this effect have been executed by the parties. The respondents have failed to deliver the possession of the flats on agreed dates. The complainants want to withdraw from the project and claim refund of their amount with interest and compensation.

Defence of respondents.

2. The respondents have failed to file the reply. Hence the complaints proceed without their reply. However, the learned advocate of the respondents has raised some points which the respondents have raised in other matters of the same project. So I put them on record.

3. The respondents submit that the complainants were aware of the fact that the project was being developed under SRA scheme and therefore the possession of their flats was likely to be delayed beyond the agreed dates of possession. Not only that, the dates of possession were tentative depending upon the availability of the building materials and the possession was likely to be delayed because of the Govt. Rules, orders, regulations, etc. They admit that they have not handed over the possession of the flats to the complainants on agreed dates because the letter of intent required them to seek various permissions and approvals mentioned in it. The main reasons which delayed the project are;

B-5

1. Acquisition of CTS No.148, the adjoining plot. One of the conditions is to acquire this private plot and to include it in the scheme. Its owner was not traceable and therefore the acquisition proceeding was started by SRA on 30.03.2015. But thereafter the said authority did not follow it up and the plot is not yet acquired. Hence, FSI of the same plot have not been granted to the respondents.
2. D.P. Road setback by MCGM- as per the condition laid down by LOI, the respondents' Architects applied to MCGM on 25.11.2013 to get D.P. Road setback land demarcated from A.E. (Survey/D.P./TNC/Dept. of MCGM) and to hand it over free of cost and free of encumbrances to MCGM for obtaining CC for the last 25% of sale built up area. However, they did not get any response from 25.11.2013.
3. NOC for 60 mtrs. Wide Anik Bandra Pinjrapole road. In this context to meet the requirement of L.O.I. they applied on 28.12.2009, however, on 23.4.2010 they received a letter from MMRDA to rehabilitate a mosque. On 20.4.2012 they explained their inability to accommodate the said mosque in SRA scheme and that issue was pending till 13.10.2016 when they filed revised application for NOC.
4. High Rise NOC : They applied for High Rise NOC on 10.03.2013. The concerned authority issued it on 19.04.2017.
5. Revised LOI letter dated 7.6.17 - The application for revised LOI have been submitted on 7.6.17 and it is pending. Therefore, they contend that the project is delayed.



6. The learned advocate of the respondents submits that out of 34 slabs 24 slabs have been cast and the respondents are ready to hand over the possession of the flats by December 2019.
7. So far as payment by Mr. Akash Tekriwal is concerned, the respondents deny their liability to reimburse him the amount of loan processing fee, stamp duty on loan and loan interest shown in the payment format marked Exh. 'A' submitted by him.
4. Therefore, respondents contend that the complainants are not entitled to get the refund of their amount especially when the project is nearing its completion.
5. Following points arise for determination. I record my findings thereon as under: -

POINTS.

FINDINGS.

- | | |
|--|--------------|
| 1. Whether the respondents failed to deliver the possession of the flats on agreed dates? | Affirmative. |
| 2. Whether the respondents have been prevented by the causes beyond their control from completing their project in time? | Negative. |
| 3. Whether the complainants are entitled to get refund of their amount with interest? | Affirmative. |

Reasons:

Legal Provision. -

6. Section 18 of RERA provides that when the promoter fails to complete or is unable to give possession of apartment in accordance



with the terms of the agreement for sale or duly completed by the date specified therein, he shall be liable, on demand to the allottee in case allottee wishes to withdraw from the project, to refund his amount with interest at prescribed rate from the date of payment till its refund.

7. The rules framed under the Act have prescribed the rate of interest. It is 2% above the State Bank of India's highest marginal cost of lending rate. It is currently 8.5%. Hence, the allottees are entitled to get the interest at the rate of 10.5%.

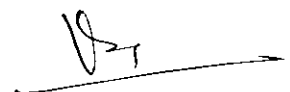
Delayed Possession:

8. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flat by the end of December 2017 to Mr. Khalid and by end of December 2015 to Mr. Akash but they have not delivered it till the date of complaints. Hence, I hold that the respondents have failed to hand over the possession of the flats on the agreed dates.

Reasons for Delay:

9. The learned Advocate of respondents submits that the respondents were required to take several permissions and approvals from various authorities mentioned in the letter of intent dated 19.10.2011. She has pointed out the reasons of delay, viz. acquisition of plot bearing CTS No.148; D.P. Road setback issue; rehabilitation of the mosque; the delay caused by the authorities in granting high rise NOC and revised letter of intent dated 07.06.2017 which are referred to above. According to her, these causes were beyond the control of the promoter and therefore they could not complete the project in time.

10. At this stage it is necessary to keep in mind that Maharashtra Ownership of Flat Act, 1963 is in force and Section 88 of RERA permits



its application. The agreements for sale have been executed in accordance with the provisions of Maharashtra Ownership of Flat Act. Section 8 of the said Act provides remedy of refund of the allottees' amount on promoter's failure to give possession in time. Its clause (b) provides that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified and a period of 3 months thereafter or a further period of 3 months, if the reasons still exist, then promoter shall be liable on demand to refund the amount already received by him with simple interest @ 9% p.a. from the date he received the same till they are refunded.

11. In view of this provision, I find that even if it is proved by the respondents that they were prevented by the causes which were beyond their control to complete the project in time, they are entitled to get the extension of 6 months at the most and not more than that. **In Neelkamal Realtors Pvt. Ltd. Versus Union of India Writ Petition No.2737 of 2017**, Hon'ble Bombay High Court in its Ordinary Original Civil Jurisdiction have held that the promoter having sufficient experience in open market, is expected to have a fair assessment of time required for completing the project. So when the promoter offers any flat for sale and specifies the date of possession, he has to assess all the difficulties which he is likely to face in completing the project. Once he specifies the date to deliver the possession, he is bound by it. However, in order to attract the customers, promoter specifies the earlier date though he knows that he would not complete the construction on the date so specified. This is nothing but the dishonesty of the promoter and he indulges in such unfair practice in order to attract the customers for selling his product and to grab their money at the earliest opportunity. Here, in this case the respondents



have mentioned that since beginning of the launch of the project they were aware of the fact that various NOCs, permissions and approvals were required and the problems they were likely to face. Despite these facts, they have executed agreement for sale with the complainants and promised to deliver the possession by end of December 2015 and 2017. Therefore, I find it difficult to hold that respondents have been prevented by the causes which were beyond their control, to complete the project in time. The pleadings of the respondents further demonstrate that they have not acted vigilantly to pursue the matter with the authorities. They cannot take advantage on their own wrongs and therefore reasons assigned by them do not justify the delay.

Entitlement of the Complainants.

12. The complainants want to withdraw from the project. Mr. Khalid and Mrs. Ezhar have filed the statement of the payment made by them to the respondents marked exhibit- A showing payment made towards the consideration, taxes, TDS, registration fee and stamp duty on agreement for sale. The respondents have not disputed these payments. Mr. Khalid and Mrs. Ezhar have paid stamp duty on 25.02.2016. They are not entitled to claim this amount because they can claim refund thereof from the registrar's office on cancellation of agreement. By way of abundant precaution, I make it clear that the refund of stamp duty can be claimed within the period of five years of execution on the cancellation of the agreement for sale under Section 48 of the Maharashtra Stamp Act and hence, in case of non-satisfaction of complainants' claim within five years of the agreement, the respondents shall be liable to refund the stamp duty amount with interest. Respondents are therefore liable to refund all amount except the amount of stamp duty shown in Exh. 'A' with interest at prescribed

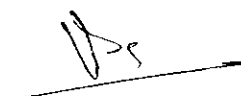


rate from the date of their receipt/payment till their refund to Mr. Khalid and Mrs. Ezhar.

13. Mr. Akash has filed the statement of the payment made by him to the respondents marked exhibit- A showing payment made towards the consideration, taxes, TDS, registration fee and stamp duty and loan interest paid by him. The respondents have disputed the amount of loan processing fee, stamp duty and loan interest. Section 18 r/w the definition of interest defined in Section 2 (za) of RERA provide that the complainant is entitled to get interest in case of refund of his amount from the date of the receipt of the amount by the promoter. The complainant Mr. Akash is entitled to get the interest at prescribed rate on loan amount and therefore, he is not entitled to get the interest paid to the Bank on loan amount which is Rs. 15,42,218/-.

14. So far as the stamp duty and processing fee paid by Mr. Akash for obtaining loan are concerned, he is entitled to get them reimbursed on the principle of restitution. He will have to be placed in the position which he would have occupied but for such sale transaction. The stamp duty for agreement for sale Rs. 8,21,412/- has been paid on 26.11.2014. The complainant can claim its refund on cancellation of agreement within the period of five years of the date of the agreement. Hence, Mr. Akash is not entitled to get the amount of stamp duty paid for agreement for sale.

15. The respondents are liable to refund the consideration amount and they have to reimburse all other expenses incurred by the complainants in the context of the transaction because they have failed to hand over the possession of the flat on the agreed date.



16. In addition to the above amount, the complainants are entitled to get Rs. 20,000/- towards the cost of their complaint. Hence, the order.

ORDER

The respondents shall pay Mr. Khalid Ahmed and Mrs. Ezhar Parveen the amount mentioned in the statement marked Exh. 'A' except the stamp duty with simple interest @ 10.5% p.a. from the date of receipt/payment till its refund.

The respondents shall pay Akash Tekriwal the amount mentioned in the statement marked Exh. 'A' except the stamp duty paid for agreement for sale and the amount of loan interest with simple interest @ 10.5% p.a. from the date of receipt/payment till refund.

Exh."A" of the complaints shall form the part of the order.

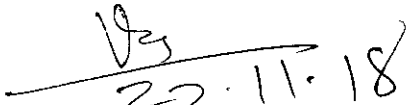
The respondents shall pay the complainants Rs. 20,000/- towards the cost of the complaint.

The charge of the complainants' claims shall be on their booked flats till their satisfaction.

On satisfaction of the claims, the complainants shall execute the deeds of cancellation of agreements on respondents' cost.

In case of respondents' failure to satisfy the complainants' claim within five years from the date of agreement/s, they shall pay the complainant/s amount of stamp duty with interest at prescribed rate.

Mumbai
Date: 27.11.2018.


27.11.18
(B.D. Kapadnis)
(Member & Adjudicating Officer)
MahaRERA, Mumbai.

Before the Hon'ble Maharashtra Real Estate Regulatory Authority, Bandra Mumbai

Complainant No. CC006000000056439

Mr. Khalid Ahmed & Mrs. Ezhar Parveen

...Complainants

Versus

Reliance Enterprise

...Respondent

PAYMENT FORMAT

Sr. No.	Date	Amount (in Rupees)	Purpose	Receipt No./Cheque No. with Bank Name
Payments made by the Complainant to the Respondent				
1.	01/11/2014	5,00,000/-	Token Amount	Paid by way of RTGS bearing reference No. N305140039665145 on November 1, 2014 and a receipt bearing no. 1464 confirming such payment was issued by the Respondent to the Complainants on November 12, 2014.
2.	12/11/2014	21,00,000/-	Part	Paid by way of RTGS bearing reference No. N312140041086660 on November 8, 2014

Sl. No.	Date	Amount (in Rupees)	Purpose	Receipt No./Cheque No. with Bank Name
			Consideration	and a receipt bearing no. 1466 confirming such payment was issued by the Respondent to the Complainants on November 12, 2014.
3.	24/11/2014	24,00,000/-	Part Consideration	Paid by Cheque bearing No. 000001 dated November 24, 2014 drawn on HDFC Bank and a receipt bearing no. 1470 confirming such payment was issued by the Respondent to the Complainants on December 8, 2014.
4.	24/11/2014	16,00,000/-	Part Consideration	Paid by Cheque bearing No. 000007 dated November 24, 2014 drawn on HDFC Bank and a receipt bearing no. 1470 confirming such payment was issued by the Respondent to the Complainants on December 8, 2014.
5.	24/11/2014	24,00,000/-	Part Consideration	Paid by Cheque bearing No. 032951 dated November 24, 2014 drawn on HDFC Bank and a receipt bearing no. 1471 confirming such payment was issued by the Respondent to the Complainants on December 8, 2014

Sr No	Date	Amount (in Rupees)	Purpose	Receipt No./C No. with Bank Name
6.	27/03/2015	10,00,000/-	Part Consideration	Paid by Cheque bearing No. 000011 dated March 27, 2015 drawn on HDFC Bank and a receipt bearing no. 1715 confirming such payment was issued by the Respondent to the Complainants on April 3, 2015
7.	31/03/2015	4,74,624/-	Service tax	Paid by way of RTGS bearing reference No. HDFC R520 5033161518532 on March 31, 2015 and a receipt bearing Nos. 1706 issued by the Respondent to the Complainants confirming such payment was issued by the Respondent to the Complainant on March 31, 2015
8.	17/06/2016	10,00,000/-	Part Consideration	Paid by way of RTGS bearing reference No. Dr-UTIB0000183
9.	25/02/2016	30,000/-	Registration Fee	Paid by way of RTGS bearing reference No. HDFCR52016022574794232 on February 25, 2016 and the bank statement of the Complainants reflect the debit entry for such amount

Sr. No.	Date	Amount	Purpose	Receipt No./Transfer No. with Bank Name
10.	25/02/2016	6,40,000/-	Stamp Duty	Paid by way of RTGS bearing reference No. HDFCR52016022574794232 on February 25, 2016 and the bank statement of the Complainants reflect the debit entry for such amount
11.	25/02/2016	1,28,000/-	Value Added Tax	Paid by way of RTGS bearing reference No. N056160131912517 on February 25, 2016 and the bank statement of the Complainants reflect the debit entry for such amount
12.	09/04/2016	1,28,000/-	TDS	The bank statement of the Complainants reflect the debit entry for such amount

AD Deolekar

Aditya Deolekar
Advocate for the Complainant

Respondents' Remark

no Dispute in the payment.

D.M. Chopra
Adv. Divya M. Chopra
Reliance Enterprise 27/11/18
Respondent

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

COMPLAINT NO: CC006000000056439

Mr. Khalid Ahmed,
Mrs. Ezhar Parveen

---Complainants.

Versus

Reliance Enterprise.
(Hillview)

---Respondents.

MahaRERA Regn: P51800005482

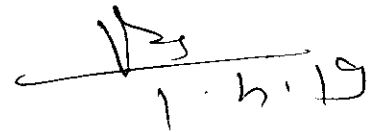
Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

**ORDER ON THE RECOVERY APPLICATION FILED IN THE
COMPLAINT.**

The complainants represented through the Adv. Deolekar submits the non-compliance of the order passed in the matter. The respondents are represented through Adv. Shweta Shirke. She submits that they have not complied with the order and seeks time to submit schedule of repayment. More than sufficient time has already been given.

2. Hence, issue recovery warrant under Section 40(1) of RERA against the respondent.

3. The complainant to produce the statement showing the amount which has become due.



Mumbai.
Date:01.04.2019.

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