

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000001788

Mr. Naman Agarwal,
Mrs. Neeru Agarwal &
Mr. Abhaykumar Agarwal ... Complainants.
Versus
Reliance Enterprises(1)
(Hill View)
Dewan Housing Finance Corporation Limited.(2) ... Respondents.

MahaRERA Regn: P51800005482

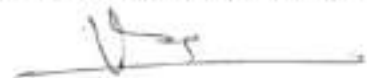
Coram:
Hon'ble Shri B.D. KAPADNIS.

Appearance:
Complainant: Adv. Aditya Deoleker.
Respondent: Adv. Divya M. Chopra

Final Order.
28th March 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 they booked Apartment No. 904, A-Wing of Respondent's Hill View project situated at Chembur for Rs. 1, 21,00,000/-. Their apartment is in the sale component of the Respondents' SRA project. The complainants contend that they agreed to purchase the flat under 20:80 scheme, wherein they were required to pay 20% of the total value of the flat at the time of booking and balance 80% was to be paid at the time of handing over the



possession of the said apartment. The respondents agreed to deliver the possession of the flat by December 2015. The Agreement for Sale to this effect has been executed on 31.07.2013.

2. The respondent No.1 pursued the complainants to take home loan from respondent No.2 for paying remaining 80 percent consideration amounting to Rs.98,95,000/-. The respondent No.1 agreed that they shall pay interest of the loan amount to the respondent No.2 till they hand over the possession of the flat to the complainants. The respondent No.1 failed to deliver the possession of the flat by December 2015 and stopped the construction from April, 2016. The respondent No.1 stopped paying interest on housing loan after October 2016. Several cheques given by the respondent No.1 to respondent No.2 against the payment of interest bounced. Therefore, respondent No.2 started to make phone calls to the complainants to pay the instalments. They also sent their recovery teams at the home of the complainants which caused them physical and mental harassment. The respondent No.2 deposited a blank cheque out of three cheques given as Security to withdraw Rs.10,38,267/- but it bounced. Therefore, respondent No.2 issued legal notice under section 138 of Negotiable Instruments Act calling the complainants to pay them the money. Therefore, prosecution of the complainants for the offence punishable under Sect. 138 of the Act looms large. In the circumstances, the complainants want



to withdraw from the project and claim their amount with interest and compensation.

Defence of respondents.

3. The respondent No.1 have filed reply to contend that the complainants were aware of the fact that the project was being developed under SRA scheme and therefore the possession of their flat was likely to be delayed beyond the agreed date of possession December 2015. Not only that, this was the tentative date 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 flat to the complainants by the end of December 2015 because the letter of intent required them to seek various permissions and approvals mentioned in it. The main reasons which delayed the project are;

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 proceedings 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 has 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 has been submitted on 7.6.17 and it is pending. Therefore, they contend that the project is delayed.
4. The respondent No.1 have contended that the complainants are investors and they did not intend to purchase flats. They do not object the delay for 36 months because the respondents were paying interest



on home loan. The complainants expected to get 20% more than their investment and when they felt that they are not going to gain the expected appreciation in value, they have filed this complaint. Therefore, they are not entitled to get the refund of their amount especially when the project is nearing its completion.

5. The 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 date?	Affirmative.
2. Whether the respondent No.1 have been prevented by the causes beyond their control from completing their project in time?	Negative.
3. Whether the complaints are entitled to get refund of their amount with interest and Compensation?	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 allottees in case allottee wishes to withdraw from the project, to return the amount received by him with interest at prescribed rate and compensation also.

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 8.05%. Hence, the allottee is entitled to get the interest @ 10.05%.

Delayed Possession:

8. The parties are not at dispute on the point that the respondent No.1 agreed to deliver the possession of the flat to the complainants by the end of December 2015 but they have not delivered it till the date of complaint. Hence I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

Reasons for Delay:

9. The learned Advocate of respondent No.1 has argued at length to submit that the respondent No.1 were required to take several permissions and approvals from various authorities mentioned in the letter of intent dated 19.10.2011. He 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 7.6.17 which are referred to above. According to him, 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 agreement for sale has 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 complainants 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 has 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 type of unfair practice in order to attract the customers for selling their product and to grab their money at the earliest opportunity. Here, in this case the respondent No.1 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 on 31st July, 2013 and promised to deliver the possession by end of December 2015. 99.17% consideration has already been collected by the respondent No.1, therefore I find it difficult to hold that respondent No.1 have been prevented by the causes which were beyond their control, to complete the project in time. The pleadings of the respondent No.1 further demonstrate that they have not acted vigilantly to pursue the matter with the authorities. They cannot take advantage on these grounds.

Entitlement of the Complainants.

12. The complainants have filed the statement of their claim market exhibit-1 to show the payment made by them to the respondent No.1. It shows that the complainants paid Rs. 20,00,000/- on 30.04.2013 towards consideration of



the flat; Rs.1,01,000/- towards TDS amount and Rs.1,04,000/- on 07.08.2013. These payments have not been disputed by respondent No.1. They have also admitted that Rs.97,95,000/- have been collected by Respondent No.1 from the Loan A/c. on 26.08.2013.

13. The complainants have paid Rs.4,95,000/- towards Service Tax & VAT; Rs. 5,618/- towards the processing fee of the loan on 30.04.2013. They have paid Rs. 30,000/- towards registration fee on 29.07.2013 and Rs.1,18,070/- towards processing fee of the loan on 13.08.2013. They have paid Rs.19,719/- towards Franking fee of the loan proposal on 19.08.2013. The complainants are entitled to get reimbursement of the amount paid by them to the respondent No.1 and the amount of additional expenses incurred by them because respondent No.1 have failed to deliver the possession of the flat on agreed date. Respondent No.1. have defaulted in keeping their promises and hence they must shoulder liability of repayment. In addition to the above amount, the complainants are entitled to get Rs. 25,000/- towards the cost of the complaint.

14. It is brought to my notice that since respondent No.1 stopped payment of interest on loan taken in the name of the complainants, respondent No. 2, a Finance Company issued legal notice to the complainants under section 138 of Negotiable Instrument Act and put hanging sword of the prosecution on their heads.



15. The complainants have also brought to my notice that the bouncers to whom they have politely referred to as recovery team in their complaint were sent by the respondent No.2 to their house which caused them physical and mental agony. Since these special facts have been established by the complainants, they are entitled to get Rs.1,00,000/- towards the compensation from the respondent No.1.

16. The complainants have taken the flat under 20:80 scheme. The 80% of the consideration was payable at the time of possession. Therefore, the entire liability of repayment of loan comes to the respondent No.1 as the complainants have been withdrawing from the project.

17. The complainants are entitled to get simple interest @10.05% p.a. on their amount paid to the respondent No.1 as well as on the additional expenses incurred by them from the respective dates of payment.

Respondent No.2's liability.

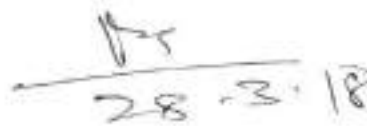
18. Respondent No.2 is the financial company from whom loan is taken by respondent No.1 in the name of the complainants. Section 31 of the RERA Act provides that the complaint can be filed against promoter, allottee or real estate agent for any violation, contravening of the provisions of the Act. Therefore, the complaint filed against respondent No.2, the financial institution, is not maintainable under Section 31 of the Act and it needs to be dismissed. Hence, the order.



ORDER

1. The respondent No.1 shall refund the amount mentioned in Para 12 to 15 of this order with simple interest @ 10.05% p.a. from the respective dates of their payments till they are refunded to the complainants.
2. The respondent No.1 shall repay all the loan amount to the respondent no. 2 with interest.
3. The charge of aforesaid amount shall be on the flat booked by the complainant till they are refunded.
4. On the satisfaction of their claim, the complainants shall execute the deed of cancellation of agreement for sale in respondent No.1's favour at respondent No.1's cost.
5. The Complaint against respondent No.2 is dismissed.

Mumbai
Date: 28.03.2018.


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