

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

COMPLAINT NO. CC006000000056293

Vikas Garg

..Complainant

Verses

RNA Corp. Pvt. Ltd.

..Respondent

MahaRERA Regn. No. P51700008296

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant : In person
Respondent : Adv. Vishal Deshing

**ORDER
(Dated 28.03.2019)**

1. The complainant who had booked a flat with the respondent/builder, seeks withdrawal from the project and refund of the amount paid, with compensation as the respondent failed to deliver possession of the flat as per agreement.
2. The complainant has alleged that he booked flat NO. C-903 in the project of the respondent RNA Vivo at Meera Bhyander vide agreement dated 29.10.2012. The complainant has paid Rs.47.50 lakhs including stamp duty, registration charges etc. As per brochures, building was to have 35 storeys. But in the agreement it was shown to have 18 storeys. The price of the flat was agreed at Rs.45,11,600/-. However, complainant was forced to pay

Rs.48,11,600/-. In the Times of India dated 21.12.2012, it was published that building was nearing completion. In the Hindustan Times dated 02.02.2013, it was published that possession will be delivered in December, 2013 and on 24.09.2013 over e-mail it was informed that 80% work was completed. Vide further, e-mail, it was informed that possession will be in June, 2014. A meeting with 24 flat owners was held at the respondent's office at Bandra on 20.03.2015. On behalf of the respondent, it was informed that possession will be delivered in December, 2015. Again delivery of possession was revised to January, 2016. Vide letter dated 21.05.2016, it was informed that possession will be delivered by December, 2016. The complainant therefore, seeks to cancel the booking and seeks refund of all amounts paid and rental paid since, January, 2014 @ 24% p.a. The complainant also seeks Rs.20 lakhs for mental harassment.

3. The complaint came before the Hon'ble Member on 22.10.2018 and came to be transferred to Adjudicating Officer. On 18.12.2018 matter was adjourned to 22.01.2019. On 21.02.2019, plea of the respondent was recorded. The respondent filed written explanation after getting it notarised. Thereafter, Arguments were heard on 21.02.2019. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. The respondent has alleged that Suit NO. 428/2017 was filed before the Hon'ble Bombay High Court by the RNA Vivo Residents' Association. On 03.08.2017 Hon'ble High Court did not grant ad-interim reliefs, but directed respondent to place on record that no 3rd party rights would be created in respect of flats allotted to members. Hon'ble High Court dealt with purported delay in completion of the project and rejected ad-

interim reliefs to the complainants. Hon'ble High Court granted extension to building Phase I till 31.12.2018. Owing to certain unavoidable circumstances, project could not be completed. Date for completion informed to MahaRERA is 31.07.2019. The agreement does not have date for possession specified in it. The complainant has not given date on which, cause of action arose.

5. Between the years 2009- 2011, respondent purchased plot of land on survey no.224 to carry out construction. The respondent started work in 2010 and obtained Commencement Certificate. Revised Commencement Certificates were obtained on 19.04.2012 and 13.11.2013. On 12.02.2015 respondent was served with stop work notice. It was withdrawn on 20.10.2015. Therefore, project got delayed. Therefore, complaint deserves to be dismissed.
6. On the rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS

FINDINGS

- | | |
|---|---------------------|
| 1 Has the respondent failed to deliver the possession of the flat to the complainant as per agreement, without there being circumstances beyond his control? | Affirmative |
| 2 Is the complainant is entitled to the reliefs claimed? | Affirmative |
| 3 What Order? | As per final Order. |

REASONS

7. Point Nos. 1 & 2 – The complainant has referred to brochures and news^rpaper reports about alleged date of delivery of possession. Copy of the agreement dated 29.10.2012 is placed on record. There is no dispute that date for delivery of possession is not mentioned in the agreement. ^{In} Clause 24 of the agreement

date of delivery of possession is kept blank. Under Section 3(2)(f) of Maharashtra Ownership Flats Act, 1955¹ promotor shall be specify in writing date by which possession of the flat is to be handed over and he shall handover such possession accordingly. The respondent has committed breach of this provision of Law. Again under Section 46 of the Contract Act, where no time for performance is specified engagement must be performed within a reasonable time. In the present case, from the year 2012, 7 years have gone by and still respondent has not delivered possession of the flat to the complainant. The grounds put forward by the respondent do not justify so much delay in delivery of possession, especially when respondent accepted money from the complainant by promising delivery of possession of the flat. The respondent's plea is that litigation is pending before the Hon'ble High Court. The decision in this matter will be subject to the Order of Hon'ble High Court. However, I am having no hesitation to hold that respondent has failed to deliver possession without circumstances beyond his control, because respondent was expected to apprehend such situation while undertaking the work. I therefore, answer point No.1 in the affirmative.

8. The complainant claims to have paid Rs.48,11,600/- though the agreed amount was Rs.45,11,600/-. As per the Agreement, the agreed price was Rs.48,11,600/-. The respondent is not denying having received Rs.48,11,600/- which appears to be including stamp duty. The complainant is claiming rent paid since January, 2014 @ 24% p.a. No evidence is adduced about paying any rent. Complainant will be entitled to Rs.1,00,000/- as compensation. The complainant is entitled to refund of amount paid except the stamp duty which can be refunded together with interest as provided under Rule 18 of the Maharashtra Rules.

I therefore, answer point no. 2 in the affirmative and proceed to pass following Order.

ORDER

1. Subject to the Orders of the Hon'ble High Court, the complainant is allowed to withdraw from the project.
2. Respondent to pay 48,11,600/- to the complainant, except stamp duty amount if included, which can be refunded as per rules, together with interest @10.70% p.a. from the date of payments till final realisation.
3. The respondent to pay to the complainant Rs.1,00,000/- towards mental harassment.
4. The respondent to pay Rs.20,000/- to the complainant at costs of this complaint.
5. The complainant to execute cancellation deed at the cost of the respondent.
6. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 28.03.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA