

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

Complaint No.CC004000000010076

- 1. Kishor Nathubai Shah,**
- 2. Manish Narshi Gudhka**

Both R/at 504, Chandanbalan CHS,
Nahur Road, Sarvodaya Nagar,
Near Jain Temple, Mulund (W),
Mumbai-400 080.

.. Complainants

Versus

- 1. Chourangi Builders And Developers
Pvt. Ltd.Housing Development and**
801, Renuka CHSL, Above Union Bank,
Jagat Vidya Marg, Bandra (East),
Mumbai-400 051.
- 2. Nagpur Integrated Township Pvt.Ltd.,**
H.No.1-89/1, Plot No.42 & 43,
3rd & 4th floor, Kavuri Hills, Phase-1,
Madhapur, Hyderabad-500 081.

.. Respondents

**Coram : Shri M.V. Kuilkarni
Hon'ble Adjudicating Officer**

Appearance :

Complainant : C.A. Ashwin Shah
Respondent No.1 : Adv. Ranjeev Carvalho,
Respondent No.2 : Adv. Avinash

FINAL ORDER
(1st April, 2019)

✓
2-4-19

1. The Complainants, who had booked a flat with the Respondents/Builders, seek refund of the amount paid with interest, as the Respondents mislead Complainants and failed to deliver possession as per agreement.
2. The Complainants have alleged that the Respondent Nos.1 and 2 are the developers of ongoing project "First City" at village Khapri (Rly), Tal. Nagpur. The Complainants booked Unit No. Symphony 2D1304 having super built up area of 1387 sq. ft. The flat was booked on 15.03.2011 by making payment of Rs. 25,00,000/-. The total consideration was fixed at Rs.38,59,890/-. The agreement was executed and registered on 26.04.2013. The Respondents had assured that possession will be delivered on 31.03.2014. Vide email, dated 17.07.2017 Respondent No.1 expressed that there will be a possible tie-up with Nagpur Integrated Township Pvt. Ltd. i.e. Respondent No.2 and two options were given. First option was compensation for delay in possession from 2014 to 2017. Second option was refund of only principal amount. The Complainants opted for option No.1 and asked for fixing the date for possession. No reply was received from Respondents. Vide communication dated 27.06.2018, Complainants retracted from option No.1. Vide email, dated 09.08.2018, Respondent No.1 pleaded force majeure factors and various pending litigations, which were not disclosed earlier. There was defect in title. Misleading statements were made for enticing Complainants to purchase the flat. The Respondents are guilty under Section 12 and 18 of the Real Estate (Regulation & Development) Act, 2016. The Complainants therefore, seek refund of the amount paid with interest and compensation.

1-4-19

3. The complaint came up before the Hon'ble Member on 17.10.2018 and came to be transferred to the Adjudicating Officer. The complaint came up before me on 19.12.2018 and was adjourned for plea of Respondents and written explanation of Respondents. Plea was recorded on 23.01.2019. Respondent Nos.1 and 2 filed written explanation on 23.01.2019. Thereafter the matter was adjourned for final hearing to 26.02.2019. On that day, arguments for both the parties were heard. As I am working at both Pune and Mumbai Offices in the alternative weeks, this matter is being decided now.
4. The Respondent No.1 has alleged that the complaint is false and frivolous. Maharashtra Airport Development Company Ltd. (MADC), a special planning authority under M.R.T.P. Act was the owner of the plot of land situated at Mihan. MADC was engaged in the development of Nagpur Airport as an International hub in or about 2005. MADC was desirous of setting out a township project and invited bids on or about 24th June, 2005. The Respondent No.1 submitted a bid and was successful bidder. On or about 22nd Sept. 2005 letter of Intent was issued by MADC to Respondent No.1. Development agreements were executed on 22nd June, 2006, 29th March, 2010 and 24th July, 2010. Co-development agreements were executed on 12.05.2008, 22.06.2006 and 24.07.2010. On 17.08.2010 amendments were introduced in the development agreement, dated 24.07.2010. The Respondent No.1 obtained necessary approvals from MADC.



5. On 09.06.2006 Airport Authority of India gave approval for height of 61 mtrs.. On 27.10.2008 approval for 43.3 mtrs. was given and on 22.07.2010 approval for 56.3 mtrs. was given. Said revision of the height adversely affected the project financials. Board of Approval objected to the lease, which created negative publicity from July, 2010 to Nov. 2011. On 28.11.2011 Board of Approval de-notified land of 31 acres from SEZ.

6. Respondent No.1 had obtained certain loan facilities and invoked counter guarantee of Rs. 105 Crores given by MADC. MADC proceeded to terminate the letter of intent and development agreements by issuing notice dated 14th May, 2012. The Respondent No.1 revived the project and sent ^{for} approval to MADC on 24.02.2015. On 30.03.2016 settlement proposal was signed. On 04.05.2016 there was in-principle agreement for settlement of disputes. IJM Group of Companies was made Special Purpose Vehicle ("SPV") i.e. Respondent No.2, which made direct payment of Rs. 108 Crores to MADC as well as payment of Rs.12 Crores. Respondent No.1 agreed to transfer rights under development agreement to Respondent No.2 and MADC entered into development agreement with Respondent No.1. Therefore, Respondent No.2 stepped into shoes of Respondent No.1. Two options were given to the Complainants. The Complainants agreed to continue with existing booking at old rat. The apartments in Symphony 1 and Symphony 2 will be ready by December, 2019. Submissions of Respondent No.2 were accepted in Writ Petition No.1040/2016 by Hon'ble Bombay High Court. The complaint therefore, deserves to be dismissed.

[Signature]
2-4-19

7. The Respondent No.2 has alleged that MADC was owner of land situated at Mihan and similar contentions taken by Respondent No.1 are adopted. Two options as above were given to Complainants. Out of 449 customers 97 gave option No.1 and exited by collecting principal amount. The project is bifurcated for convenience into various projects. As per declaration given to MahaRERA, Symphony 1 and Symphony 2 will be completed by December, 2019 and Symphony 3 by December, 2020. Hon'ble High Court has disposed off the petitions against the Respondents. Therefore, complaint against present Respondent is not tenable.
8. On the basis of 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) Have the Respondents failed to deliver possession of flat to the Complainants as per agreement, without their being circumstances beyond their control ? ..	In the Affirmative.
(2) Have the Respondents made false disclosures and mislead the Complainants ? ...	In the Negative.
(3) Are the Complainants entitled to the reliefs claimed ?	In the Affirmative

[Signature]
12/11/19

(4) What order ? As per final order.

REASONS

9. **POINT Nos.1 and 2**:- The Complainants have alleged that agreement in their favour was executed by Respondent No.1 on 26.04.2013. There is an agreement for lease, dated 26.04.2013 executed between Maharashtra Airport Development Company Ltd. and M/s. Reatox Builders & Developers Pvt. Ltd. and Complainants. Whether Respondent no.1 is the same or successor of M/s. Reatox Builders & Developers Pvt. Ltd. is not made clear. Flat No. Symphony 2D1304 was agreed to be sold to Complainants for Rs. 38,59,890/-. As per clause 4.1, subject to necessary approvals/permits/licenses received and/or to be received from various departments of State and Central Government for development and construction of township project and the scheduled property and further subject to force majeure circumstances and further subject to prospective lessee not being in default of payment of any instalments of total consideration, the construction of the scheduled property will be substantially completed as per specifications within 30 months from the date of terms and conditions of letter of allotment. Under clause 4.2, if the construction was not completed as above, lessee was to be paid damages @ 12% p.a. for the delay. The Complainants have alleged that date for delivery of possession was 31.03.2014. However, as per agreement, date of completion was 2.5 years since letter of allotment, that means it should be October, 2015 i.e. from agreement for lease, dated 26.04.2013. It is clausd 1.10

10-7-19

to the effect that Developer will give possession to the prospective Lessee on or before 31st March, 2014 or as per valid extension allowed from time to time by MADC. The Respondent No.1 has not putforth serious challenge regarding the date for delivery of possession.

10. The Respondent No.1 has contended that after accepting his bid, MADC issued letter of intent on 22.09.2005. The development agreements were executed in 2006 and 2010. Construction began in 2007. Height approvals for 61 mtrs. in 2006, 43.6 mtrs. in 2008 and 54.10 mtrs. in 2010 were received. The flat booked by Complainants appears to be on 13th floor. Therefore, height revision had got nothing to do with the flat booked by the Complainants. That all had happened well before the agreement of the year 2013 was executed. Then it is alleged that on 28.07.2011 Board of Approval denotified land of 31 acres from SEZ. That has also occurred before execution of the present agreement. It appears that there was certain issue with Vijaya Bank and therefore, Respondent No.1 could not go ahead with the project. MADC is said to have terminated development agreement on 14th May, 2012. It appears that Respondent No.1 started bid to revive the project in Feb. 2015. Ultimately, Respondent No.2 took over the project in 2017.
11. The agreement, dated 26.04.2013 is a tripartite agreement between Maharashtra Airport Development Company, Reatox Builders & Developers Pvt. Ltd. and the Complainants. The agreement reads that, developer is entitled to complete the project, to lease, assign and transfer various units. As stated earlier, it is clause 1.10 to

1.2-19

the effect that developer will give possession of the flat to prospective lessee on or before 31st March, 2014 or as per valid extension allowed from time to time by MADC.

12. The termination letter, dated 16.07.2012 is produced as Exhibit "B" by the Respondents. Reatox Builders was said to have failed to clear MADC dues as well as Vijaya Bank dues. The developer was directed to forthwith clear those dues. The agreement with Complainants has been executed thereafter on 26.04.2013. The Respondent has also placed on record email, dated 21st July, 2017 issued to the Complainants. Here, it is explained that Chourangi Builders was formerly known as Reatox Builders. Respondent No. 2 was appointed as Special Purpose Vehicle. Two options were putforth before the Complainants. First option was to continue with the project and second was to quit by accepting entire principal amount. One thing is certain that MADC had not effectively terminated lease in favour of Respondent No.1. Dispute was over non-payment of a portion of charges. It was therefore, that Respondent No.1 along with MADC executed agreement in favour of Complainants.
13. As per option 1 putforth by Respondents before the Complainants, a fresh lease agreement was to be executed with Respondent No.2 within 30 days from the date of new commencement certificate for booking of the flat. Payments at original rates were to made in respect of balance amounts as per revised terms, as stated in new lease agreement. It appears that Respondent No.2 has taken over in the year 2017. No new agreement appears to have been executed till

(S.H. 14)

this date. Then there was Writ Petition No.1040/2016 filed by First City Flat Owners Welfare Association. The Respondents undertook to complete the construction of Symphony 1 and Symphony 2 by December, 2019. In view of said undertaking, Writ Petition came to be disposed off. It is the contention of the Complainants that they were not a party to the Writ Petition. The option putforth by the Respondents was not a fair option. It also appears that Respondent No. 2 has not called upon the Complainants for execution of fresh agreement.

14. The grievance of the Complainants is that the Respondent No.1 did not disclose essential facts when the agreement was executed. Dispute with MADC was not disclosed. Development rights of Respondent No.1 were terminated from 14th May, 2012, till execution of MADC settlement agreement and this was not disclosed by the Respondent No.1. However, as stated earlier, MADC is the party No.1 and Respondent No.1 is party No. 2 in the agreement executed in favour of Complainants. If Respondent No. 1 was required to disclose the dispute, so was the responsibility of MADC, which was said to have terminated the development rights of Respondent No.1. The Respondent No.1 alone cannot be held responsible for suppression and as stated earlier, MADC was not serious in termination of development rights of Respondent No.1. It's anxiety was to recover the dues from Respondent No.1 and ultimately the dispute got settled when Respondent No.2 undertook all liabilities. The Complainants do not appear to have taken any action against MADC. Hence so far as Respondents

6/2/19

making false or incorrect statement is concerned, the Respondents alone cannot be held responsible.

15. However, so far as Respondents not delivering possession of the flat to the Complainants is concerned, it appears that Respondents never informed the Complainants as to on what new date possession will be delivered. Even fresh agreement has not been executed by Respondent No.2 in favour of Complainants. May be that before Hon'ble High Court and before MahaRERA, the Respondents have given December, 2019 as the date for delivery of possession. However, since no agreement has been executed giving specific date for delivering possession to the Complainants, there is no privity of contract existing between Complainants and Respondents to that effect. The Complainants booked their flats way back in the year 2010. The delay has not been justified by the Respondents. It was because of internal problems of the Respondent No.1 that the project could not go ahead as per schedule. Dispute arose with MADC and Respondent No.1 is solely responsible for the same. This circumstance cannot amount to force majeure. So far as Respondent No.2 is concerned, he has not cared to execute agreement in favour of Complainants. Under Section 46 of the Contract Act, when no time for performance is specified, engagement must be performed within a reasonable time. I therefore, hold that Respondents have failed to deliver possession to the Complainants as per agreement without their being circumstances beyond their control. I therefore, answer Point No.1 in the affirmative and Point No.2 in negative.

W.N.G.

16. **Point No.3** :- In view of findings on Point Nos.1 and 2 as above, the Complainants are entitled to refund of amount with interest as provided under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosure of Website) Rules, 2017 . The Complainants claim refund of stamp duty of Rs. 1,83,360/-. If Complainants are entitled to refund of stamp duty from Government as per rules, the Respondents will not be liable for its refund. Otherwise Respondents will be liable to refund that amount. Complainants claim compensation of Rs. 3,00,000/- for giving false and misleading information. I have already negative^{ly} said claim of the Complainants. I therefore, answer Point No.3 in affirmative and proceed to pass following order.

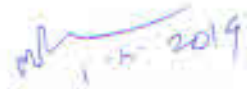
ORDER

- (1) Subject to the orders of Hon'ble Bombay High Court, the Complainants are allowed to withdraw from the project.
- (2) The Respondent Nos.1 and 2 jointly and severally to pay Rs. 25,00,000/- + stamp duty of Rs. 1,83,360/- if it cannot be refunded as per rules to the Complainants, together with interest @ 10.75% p.a. from the date of payments till final realization.



- (3) The Respondents to pay Rs. 20,000/- to the Complainants as costs of this complaint.
- (4) The Complainants to execute cancellation deed at the cost of the Respondents.
- (5) The Respondents to pay above said amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Date :- 01.04.2019


(M.V. Kulkarni)
Adjudicating Officer,
MahaRERA