

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC001000000000037

Seema Salve ... Complainant

Versus

Sanklecha Construction Private Limited ... Respondent  
MahaRERA Regn.No. P51600008638

Corum:

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was herself present.

Respondent was represented by Mr. B.A.Bandiadekar, Adv., Mr. Sagar Avhad

**Order**

April 9, 2018

1. The Complainant had purchased two apartments bearing No. 901 and 1001 in building No B1 in the Respondent's project 'Waterways' situated at Nashik via registered agreements for sale dated July 30, 2014 (for apartment bearing no. 901) and August 1, 2014 (for apartment bearing no. 1001). The Complainant has alleged that at the time of booking the Respondent had promised to handover possession by December 2016. Further, she alleged that because the progress of construction was very slow she cancelled the agreement for sale with respect to the apartment bearing no. 1001 and that the Respondent has made partial payment towards the refund of the said apartment, prior to the coming into effect of the Real Estate (Regulation and Development) Act, 2016.
2. The Complainant has also alleged that in spite of having paid 100% towards the consideration of the apartment bearing no. 901, the Respondent has failed to hand over the possession of the said apartment within the stipulated period and therefore she intends to withdraw from the project as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*). Further, she prayed that the Respondent be directed to refund the balance payments pertaining to apartment no. 1001.



3. During the hearing held on February 23, 2018, the advocate for the Respondent argued that pursuant to the agreement for sale for apartment no. 901, the timeline for handing over possession of the said apartment was December 2017 with a grace period of such reasonable time as may be deemed fair and necessary on account of reasons beyond control of the Respondent and having all necessary clearances in place as may be applicable during the time of handing over possession. The relevant portion of Clause 4 of the said agreement reads thus:

"...

A. The Promoter herein expects the delivery of possession of the Said Apartment tentatively by the month of December 2017 with a grace period of such reasonable time as may be deemed fair and necessary on account of the reasons beyond control of the Promoter and having all necessary and statutory clearances in place as may be applicable during the time of handing over delivery. The delivery of possession shall be after obtaining the completion certificate / occupation certificate and the possession shall be delivered if all the consideration amount and all other amounts and deposits with all the dues are paid by the Purchaser / s and that the Purchaser / s has fulfilled his part of obligation under this agreement. The construction of project being carried out in phases the agreed infrastructural at facilities may not be complete the time of possession of the Said Apartment and as such will be completed simultaneously along with the further phases and will be finally handed over to the Apartment Association formulated. The Purchaser / s agrees not raise objections upon any matter relating thereto at any time.

... "

4. Further, he argued that the construction work of the project is delayed because of reasons which were beyond the Respondent's control. Specifically, he argued the project was delayed because there was a delay in receiving the environmental clearance from the Environment Department.
5. With respect to apartment bearing no. 1001 the Respondent argued that all amounts paid by the Complainant have been refunded, prior to the registration of the project with MahaRERA and no further amounts are due to be refunded by the Respondent. Therefore, she is not an allottee with respect to the said apartment.





6. Finally, he argued that the Respondent is willing to hand over possession by December 31, 2018, which is several months earlier than the revised date disclosed by the Respondent in its MahaRERA registration.
7. Parties sought to time to amicably settle the matter.
8. On the next date of hearing on April 6, 2018, the Complainant was absent.
9. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:

*" if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. "*

Accordingly, since the complainant has failed to establish that the promoter has failed to complete or is unable to give possession of the apartment in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, provisions of section 18 of the said Act does not apply to the present case.

10. As per the provisions of the Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, the revised date of possession for an ongoing project has to be commensurate with the extent of balance development.



11. In view of the above facts, the respondent shall, therefore, handover the possession of the apartment bearing no. 901, with Occupancy Certificate, to the Complainant before the period of December 31, 2018, failing which the Respondent shall be liable to pay interest to the Complainant from January 1, 2019 till the actual date of possession, on the entire amount paid by the Complainant to the Respondent. The said interest shall be at the rate as prescribed 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 Disclosures on Website) Rules, 2017.
12. In case the Complainant intends to withdraw from the said project, then such withdrawal will be guided by the terms and conditions of the agreement for sale dated July 30, 2014.
13. Since the parties have already executed the cancellation of the agreement for sale pertaining to apartment bearing no. 1001, Complainant ceases to be an allottee with respect to the said apartment and therefore no relief can be granted under the provisions of the Act or the rules or regulations made thereunder.
14. Consequently, the matter is hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA