

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI  
COMPLAINT NO. CC006000000023620

Dwijendra Mohan Gangaprasad Mishra ..... Complainant

**Versus**

Housing Development & Infrastructure Ltd. ... Respondents  
MahaRERA Regn No. P 99000012539

**O R D E R**

**Dated 30<sup>th</sup> August 2018**

1. The complainant who had booked a flat with the respondent/builder seeks withdrawal from the project and refund of his amount as the respondent failed to deliver possession of the flat within agreed period.
2. The complainant has alleged that in the year 2010 he booked flat in the project of the respondent viz. Paradis City, Sector 2, Bldg. No.18. A Wing, 3<sup>rd</sup> floor. The complainant paid Rs. 51,000/- as booking amount vide cheque dated 13.12.2010. The respondent executed agreement for sale on 28<sup>th</sup> November 2011. The respondent had agreed to deliver possession of the flat on or before 31<sup>st</sup> October 2013 vide clause 33 of the Agreement. The complainant has paid further amount of Rs.1,25,750/- as instalment amount plus Rs. 4,551/- as additional charges plus Rs. 8,836/- as VAT plus Rs. 1,317/- as interest on VAT plus Rs. 17,700/- as Stamp Duty plus Rs.8900/- as Registration charges. Since the respondent failed to deliver possession as per agreement, complainant claims refund of the above amounts with interest @ 18% p.a. The complainant by issuing notice demanded said amount from respondent. But the respondent paid no heed and hence this complaint. As usual necessary details like the location, flat number, area of the flat, the price that was agreed are all missing in the complaint. They are

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required to be fished out from the documents on record. The project is at Mahim, Taluka Palghar. The Flat number appears to be 305, area 32.79 sq. mtrs. the price agreed appears to be Rs.8,32,575/-.

3. The respondent has resisted the complaint by filing written explanation on 19<sup>th</sup> June 2018 when the matter came up before me. Plea of the respondent was also recorded on the same day. Arguments in this matter were heard on 17<sup>th</sup> July 2018. Since I am working at Mumbai Office and at Pune Office in alternative weeks as per availability of the dais and as the stenographer here was on leave this matter is being decided now.

4. The respondent averred that under proviso to clause 32 of the agreement the developer is entitled to reasonable extension of time for giving delivery of flat under certain circumstances like govt. notifications, orders of public or competent authorities, etc. There was delay in issuing environmental clearance by Environment Department. There was scarcity of sand due to ban on sand mining in Maharashtra. There was scarcity of construction labour and other support services due to demonetisation. The respondent had submitted plans for Mega Township for a sanction by Collector in 2010. Thereafter, respondent tried to procure various approvals and applied for environmental clearance on 30<sup>th</sup> April 2010. Normally, clearance would come within 3-6 months, but respondent received it on 2<sup>nd</sup> March, 2012 causing a delay of atleast one year to start the construction. This delay was beyond the control of the respondent and the time thus stood extended by one year. The govt. of Maharashtra formulated policy by G.R. dated 25<sup>th</sup> October 2010 and put various restrictions on sand mining. This caused lot of delay in issuing tenders for sand mining. Previously there were no such restrictions. After the new policy there was acute scarcity of sand in Maharashtra. Hon'ble Bombay High Court in Civil Writ Petition No.97 & 98 observed in its judgement dated 12<sup>th</sup> January 2011 that as a result of interim

20-8-18

orders operating in earlier proceedings there was acute scarcity of sand. The policy of the State Govt. was upheld by the Hon'ble High Court. Even Hon'ble Supreme Court upheld the restrictions on sand mining. The Maharashtra Minister had admitted in 2016 that during the last 16 years there was no sand mining auctions in Konkan and Jalgaon due to litigations. Due to demonetisation in November 2016 there was scarcity of building materials and construction labour. Thus, the respondent was unable to deliver possession of the flat to the complainant due the reasons beyond its control and respondent is entitled to extension of time. Hence, the complaint deserves to be dismissed.

5. 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) Has the respondent failed to deliver possession Of the flat to complainant without there being Circumstances beyond his control.	Yes.
2) Is the complainant entitled to the reliefs claimed	Yes.
3) What Order	As per final order

### Reasons

#### Point No. 1 & 2 :

6. Heard Advocate Shri Vishal Katkar for complainant and Mr. Madan Mohan for respondent. Both made submissions on expected lines. It was conceded by both that construction work up to plinth level has been completed. Mr. Madan Mohan has submitted that it is respondent who has invested more money. In fact, the demand raised against complainant in 2016 is pending. The date of possession mentioned in the agreement is

24.8.18

subject to certain conditions. Environmental clearance and scarcity of sand are the factors beyond the control of the respondent. Shri Katkar on the other hand drew my attention to clauses 6 & 32 which provide for interest to be paid by allottee @ 21% p.a. and that to be paid by developer @ 12% p.a. He pointed out that there is a delay of 8 years in delivering possession. He further submitted that the family of the complainant is expanding and therefore compensation needs to be awarded to the complainant.

7. The receipt annexed to the agreement dated 28<sup>th</sup> of Nov., 2011 is dated 13<sup>th</sup> of December 2010 and for Rs. 51,000/-. This is in respect of the booking amount. The project appears to have been undertaken at Village Mahim in Taluka Palghar. As per clause 33 the respondent undertook to deliver possession on 31<sup>st</sup> October 2013. It means that possession was to be delivered in a span of about 2 years since the execution agreement on 20<sup>th</sup> November 2011. The respondent is placing reliance on clause 32 to claim extension of time for delivering possession.

8. The defence raised by respondent comes a cropper. The respondent had applied for environment clearance on 30<sup>th</sup> April 2010, i.e. 1 3/4<sup>th</sup> years prior to execution of this agreement. The clearance appears to have been received on 2<sup>nd</sup> March 2012 i.e. about 3 months after present agreement was executed. Again respondent is a reputed builder knowing how the wheels of govt. machineries move. It was required to take into consideration the time that is required in a govt office for the movement of the files and decisions. It was required to give promise about date of possession by taking this factor into consideration. Likewise, scarcity of sand is raised as a defence by the respondent. That is said to have begun by the year 2000. We have observed construction activities at good pace in the State as well as the Nation during this period. In fact, the first decade of this century was a period of high growth in economy. If at all there was shortage of indigenous sand the


30.8.19

builders must have made good the deficit by resorting to alternative sources. This kind of defence will not be of much help to the respondent. Additional grounds like labour and materials shortage due to demonetization effected in November 2016 are sought to be taken by respondent. The promise to deliver possession expired on 31<sup>st</sup> October 2013. The ground of demonetization effected in November 2016 is not available to the respondent. Thus, if the respondent has failed to keep the word regarding delivery of possession to complainant it has nobody else than itself to blame. Consequently, I answer point No.1 & 2 in the affirmative and proceed to pass following order.

#### Order

- 1) The complainant is permitted to withdraw from the project.
- 2) The respondent shall pay Rs.2,18,019/- to the complainant except the stamp duty which is refundable together with interest at the State Bank of India's MCLR plus 2% prevailing as on date from the date of payment.
- 3) The complainant shall execute a cancellation deed at the cost of the respondent.
- 4) Charge of the above amount is kept on the flat in question.
- 5) The respondent shall pay Rs. 20,000/- to the complainant as costs.
- 6) The respondent shall pay above amount within 30 days from the date of this order.

Date: 30.08.2018  
Place: Mumbai

  
(Madhav V. Kulkarni)  
Adjudication Officer,  
MahaRERA, Mumbai.