

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

**COMPLAINT NO. CC006000000057708**

Anil B. Gohil  
Neeta Anil Gohil

..Complainants

Verses

Neelkamal Realtors Suburban P. Ltd.

..Respondents

MahaRERA Regn. No. P51700003433

**Coram:**

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

**Appearance:**

Complainant: Adv. Manoj Shukla  
Respondent : Adv. Anwar Landge

**ORDER  
(Dated 10.01.2020)**

1. The complainants/allottees who had booked flat with the respondent/promoter, seek compensation as respondent failed to deliver possession as per agreement.
2. Complainants have alleged that they booked <sup>flat</sup> no. 704 in building 22 in the project of the respondent Orchid Ozone now known as DB Ozone at Dahisar Check naka in Mumbai. In pursuance of advertisement given by the respondent in April, 2009, possession was promised in the year 2012. Consideration was agreed at Rs.16,12,940/- and agreement was registered on 13.03.2010. Complainants have paid Rs.14,35,518/- plus government charges. As per agreement, possession was to be given by 31.12.2014 with further extension of 1 year. However, respondent has failed to deliver possession till today. Complainants availed housing loan of

Rs.9,32,268/- from HDFC Bank and made payment to the respondents. Respondents have purposely avoided to complete the construction. As per Architect's certificate dated 17.07.2014, 19<sup>th</sup> floor slab was completed in the year 2014. 5 year have gone by, thereafter but respondents have failed to give possession. Therefore, complainants have filed this complaint.

3. The complaint came up before Hon'ble Member on 18.03.2019 and was adjourned to 26.03.2019. On that day, complaint came to be transferred to Adjudicating Officer. The complaint came up before me on 27.06.2019. It was adjourned for plea of the respondent and written explanation by respondent to 25.07.2019. Respondents filed written explanation on 25.07.2019 after pleading not guilty. Matter was adjourned for final hearing to 28.08.2019. On that day, complainants filed rejoinder. Arguments were heard on 16.09.2019. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. Respondents have alleged that agreement was registered under the provisions of MOFA. Therefore, this complaint is not tenable. Respondents have revised date for completion to 31.12.2019 as per RERA record. The work is in progress on site and regular meetings with members have been held. Reference is made to the clause 29 of the agreement. In all 25 buildings are being constructed in phased manner. Total Rs.14,35,518/- were received from the complainants towards price and Rs.39,623/- towards Service Tax and Rs.68,073/- towards VAT. Under clause 29, respondents were entitled to extension for a further period of 12 months after 31.12.2014, under certain circumstances. Initially project was delayed due to non-availability of sand as sand mining was banned in the state of Maharashtra. Quarrying of stones was also banned. There is serious economic downturn and downstream in the real

estate industry. Developer is also obliged to complete rental housing portion. Some purchasers had filed consumer complaint against the respondents in the State Commission and on 26.10.2016 State Commission restrained the respondent from selling the plot. The plot was required to be sold to meet escalated cost of construction. The complaint therefore, deserves to be dismissed.

5. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Are the complainants allottees and respondent promoter?	Affirmative
2 If yes, has the respondent failed to deliver possession of the flat to the complainants as per agreement, without there being circumstances beyond his control?	Affirmative
3 Are the complainants entitled to the reliefs claimed?	Affirmative
4 What Order?	As per final Order.

#### REASONS

6. **Point Nos. 1 to 3** - Respondent has not denied that complainants booked flat no. 704 in their project. I therefore, hold that complainants are allottees and respondent promoter. I therefore, answer point no. 1 in the affirmative.

7. Complainants have placed on record a copy of agreement dated 13.03.2010. As per clause 29, developer shall endeavour to complete construction of the said premises on or before ~~by~~ 31.12.2014 and if the construction of the said premises is not completed by 31.12.2014, then developer shall complete the construction within further period of 12 months. Usual circumstances, under which developer was entitled for further extension including

economic downturn are also mentioned. There is no dispute that respondent has not delivered possession till today.

8. Agreement is of the year 2010 and respondent had period of 4<sup>3/4</sup> years plus 1 more year for completion of the project and <sup>to</sup> deliver possession, which was to be done by 31.12.2015. Now the respondent alleges that there is serious economic downturn and down stream in the real estate industry. This has been talked about only since demonetization effected in November, 2016. Also shortage of sand is given as reason for delay in construction, which is said to have resulted due to Order of Hon'ble High Court in PIL 218 of 2006. In fact until demonetization, there was boom period in the construction industry. The alleged ground is not substantiated by adducing concrete evidence. Respondent is professional builder and was required to anticipate all such circumstances. In fact Commencement Certificate is dated 31.12.2010. What was sought to be banned was illegal sand mining. Other options were always available to the respondent. Had the respondent been completing construction by December, 2015, no alleged hurdles would have been faced by the respondents. Order of State Consumer Redressal Commission is dated 26.10.2016 and respondent was restrained from creating 3<sup>rd</sup> party interest in CTS No. 3113 at village Dahisar. There is nothing on record to show that there was surplus land, which was required to be sold. In fact, respondent has raised finance by collecting amounts from purchasers and may be from Financial Institutions. Grounds put forth by the respondent are not acceptable and respondent failed to deliver possession as per agreement, without there being circumstances beyond <sup>his</sup> their control. I therefore, answer point no. 2 in the affirmative.
9. Respondent admits having received Rs.14,35,518/- from the complainants. Complainants are entitled to claim interest on this

amount as pre Maharashtra Rules. I therefore, answer point no. 3 in affirmative and proceed to pass following order:

### **ORDER**

1. Respondent to pay to the complainants interest @10.35% p.a. on Rs.14,35,518 from 01.01.2016 till respondent delivers possession to the complainants or informs about obtaining OC.
2. The respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
3. The respondent to pay above amounts within 30 days from the date of this Order.
4. Charge of the above amounts is kept on the flat booked by complainants.

Mumbai

Date : 10.01.2020

*MD 5.5.2020 on 14-1-2020*  
**(Madhav Kulkarni)**  
**Adjudicating Officer**  
**MahaRERA**