

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
PUNE

Complaint No.CC005000000022014

**Firoz Aziz Shaikh,**  
R/o. Plot No.22, Sector 27A,  
Nigdi, Pune-411 044.

.. Complainant

Versus

**XRBIA Developers Ltd.,**  
929, Mantri House, 1<sup>st</sup> floor,  
Near Dnyaneshwar Paduka Chowk,  
F.C. Road, Pune-411 0004.

.. Respondent

Coram : Shri S.B.Bhale  
Hon'ble Adjudicating Officer

Appearance :-

Complainant : Adv. Pushpa Kachi  
Respondent : Adv. K.S. Shah

**FINAL ORDER**

1. It is the case of Complainant that he had booked 3 flats with the Respondent in the project known as "XRBIA Abode" located at village Jambhul, Tal. Mawal, District Pune. The flats booked are bearing Nos. 216, 217 and 218 from Building No. G-1. The cost of each flat as agreed was Rs. 9,77,777/-. At the time of booking of the aforesaid flats, it was orally promised by the Respondent that they will hand over possession of booked flats on or before June, 2017 or by the end of December, 2017. On that promise, the Complainant

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paid the booking amount of Rs. 1,27,200/- per flat amounting to the sum of Rs. 3,81,300/-. Therefore, Respondent also issued the provisional allotment letter of the booked flats to the complainant in the month of Jan. 2017. The allotment letter issued was not containing stage-wise time schedule for completion of the project as well as payment schedule by way of instalments, etc. The amenities as is shown in the brochure were to be provided by the Respondent. Even in absence of any details regarding payment in the allotment letter and slab-wise construction of the project, he had paid the entire amount of Rs. 11,15,172/- to the Respondent towards the booked flats. It is alleged that the project is still incomplete and Respondents failed to hand over possession of the same as orally agreed, on or before December, 2017. Therefore, he intends to withdraw from the same. By filing this complaint, he has claimed relief of refund of entire amount with interest and compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 ( hereinafter referred to as "RERA").

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2. The Respondent has resisted the claim vide its written statement dated 11.02.2019. It is contended that the Complainant has booked 3 flats as mentioned in the complaint under "NDS" (No Document Scheme) for easy payment mode. Pursuance to the booking of the flats, 3 separate allotment letters were issued to the Complainant on 21.12.2015. In the provisional allotment letter, in clause 10(b), it was mentioned that if the Complainant cancels the booking, then 10% amount of the agreement value will be deducted as liquidated damages. After booking of flats in 2015, the Complainant himself sent the cancellation request in 2018. Therefore, the

Respondent is entitled to enforce the term of clause No.10(b) of the allotment letter.

3. It is further alleged that the Respondent had never promised to hand over possession of the booked flats on or before December, 2017. The Complainant sent the cancellation letter after 3 years of the booking of the flats. The complaint is liable to be dismissed being not tenable.
4. Plea of the Respondent was also recorded through authorized representative on 20.02.2019, on which he denied the allegations levelled against the Respondent.
5. In the above facts and circumstances, following points arise for my determination and I am going to record my findings thereon for the reasons stated below.

#### **POINTS**

#### **FINDINGS**

- |     |                                                                                                                                                                                          |                          |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| (1) | Whether the Complainant is entitled to refund of the entire amount paid by him to the Respondent towards booked flats, with interest and compensation, under the provisions of RERA.. .. | .. .. In the Affirmative |
| (2) | What order ? .. ..                                                                                                                                                                       | .. As per final order.   |

#### **REASONS**

6. Heard parties through their respective Advocates. In addition to that, Adv. Pushpa Kachi for the Complainant filed on record written notes of arguments.

7. The facts which are not in dispute in this case are that, the flats which were booked by the Complainant, as alleged in absence of any written or registered agreement. Mr. K.S. Shah also fairly admitted the facts noted above and the amount alleged to have received, to the sum of Rs. 11,15,172/-. On perusal of booking forms by which the flats booked, it is seen that the date of booking is 20.12.2015. Further allotment letters filed on record are also of dated 21.12.2015. There is no written mention about the date of possession of the booked flats. Apart from the facts which are not disputed. Mr. K.S. Shah invited my attention towards the provisional allotment letters and more particularly clause No.10(b) of the same and submitted that Complainant himself has cancelled the booking of the flats, therefore, the Respondent is ready and willing to repay the amount received to it from the Complainant, after deducting the cancellation charges Rs.50,000/- per unit. To support this argument, he relied upon the judgment of Hon'ble National Consumer Disputes Redressal Commission, New Delhi in Consumer Case No. 505 of 2014 in the matter of Bijay Madan s/o. Mr. K.K. Madan v/s. Unitech Ltd. & another, dated 01.10.2015. Further it is submitted that there was no specific date of possession mentioned in any document. Nor the Respondent had promised to hand over possession of the booked flats on or before December, 2017. Subsequently, the project is registered with MahaRERA wherein the date of possession of the booked flat is to be given up to the end of 2021. Therefore, complaint is not tenable.

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8. It is to be noted that the Real Estate (Regulation & Development) Act, 2016 came into force in the State of Maharashtra w.e.f. 01.05.2017. In view of the provisions of Section 3 of the RERA, the project of the Respondent wherein the Complainant has booked the flats, can be treated as "ongoing project". Further, even in absence of any document like agreement, etc., and as admitted by the Respondent i.e. NDS Scheme, the transaction between the Complainant and Respondent regarding booking of flats can be treated as "agreement for sale" in view of the definition of Section 2(c) of the RERA. It is defined in the aforesaid Section that "agreement for sale means an agreement entered into between the promoter and the allottee". The aforesaid definition is exhaustive in nature and it can be read with the provisions of Section 2(c) of Indian Contract Act, 1872 as well as in terms of sale, a reference may be made to Section 54 of the Transfer of Property Act, 1882. In view of these legal provisions of RERA, the complaint is tenable. Even on relying on the case law which the Respondent has relied upon cited supra, the same question can be raised, what will be the reasonable period of handing over possession, when a flat is booked under the booking form and provisional allotment letter issued. Admittedly, the Complainant has booked the flats on 20<sup>th</sup> December, 2015 and waited for more than 3 years for possession of the same. On the submission made on behalf of Respondent, the possession of the booked flats is to be given by the end of 2021.
9. In the case law cited supra, the promoter or developer of the property had cancelled the booked flat of allottee on his failure to make the stage-wise payment, as mentioned in the

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agreement itself. On cancellation of the booking, the complaint was filed by the allottee alleging that the developer has deducted the excessive amount, which is not reasonable. While considering the taste of reasonableness, the excessive amount deducted by the developer came to be reduced on the taste of reasonableness. Moreover, the case law cited supra was also prior to the enforcement of RERA. Therefore, the case law on which the Respondent is relied upon, cannot be made applicable to the present case. The complaint of the complainant can be disposed in accordance with the provisions of RERA.

10. The case so made out about handing over possession in the arguments by Mr. Shah does not stand to the taste of reasonableness. As stated earlier, the project of the Respondent is already registered with MahaRERA and the same is still ongoing project. Therefore, complaint of the Complainant is tenable and his claim for refund of entire amount with interest is justified. That so far as the claim of Complainant for compensation, the interest itself includes compensation and therefore, the same cannot be allowed.

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11. In view of the provisions of the Maharashtra Rules, the Complainant is entitled to receive the interest at State Bank of India's highest Marginal Cost Lending Rate i.e. 8.70% + 2% above = 10.70% p.a. The Complainant is therefore, entitled to receive the interest on the amount of Rs. 11,15,172/- paid by him. The Complainant is also entitled to receive cost of this complaint from the Respondent. I therefore, answer Point No.1 in the affirmative and proceed to pass following order.

**ORDER**

- (i) The Respondent to pay to the Complainant an amount of Rs. 11,15,172/- together with simple interest @ 10.70% p.a. from the dates of actual payments till the realization of the due amount.
- (ii) Respondent to Pay Rs. 5,000/- to Complainant as cost of this complaint.
- (iii) Respondent to pay the aforesaid amount within the period of 30 days from the date of this order.

Pune  
Date :- 13.03.2019

( S.B. Bhale )  
Adjudicating Officer,  
MahaRERA, Pune

*S.B. Bhale*  
*13-3-19*