

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

Complaint No.CC006000000054749

Ketan Kataria,
H-62, Mahindra Park,
LBS Marg, Ghatkopar (W),
Mumbai-400 086.

.. Complainant

Versus

1. Wadhwa Residency Pvt. Ltd.th floor,
301, 3rd floor, Platina,
Plot No. C 59, G Block,
Bandra Kurla Compex,
Bandra (E), Mumbai-400 051
2. L & T Housing Finance Ltd.,
L & T House, Narottam Morarji Marg,
Ballard Estate, Mumbai-400 001.
3. Executive Engineer
(BC Building Proposal)
MCGM L & N Ward,
Mumbai.

.. Respondents

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

Appearance :-

Complainant : Adv. Gala

Respondent No.1: Adv. Gaonkar

Respondent No.2 : Absent

Respondent No.3 : Absent

2.2.19

FINAL ORDER

(07.02.2019)

1. The Complainant, who had booked a flat with the Respondent/Builder, seeks refund of the amount paid to the Respondent due to false statements and misrepresentation under which Complainant paid the amounts for the purchase and due to not delivering possession as per agreement.
2. The Complainant has alleged that he booked Flat No. P-3-1906 in the project "Promenade 3" of the Respondent at Vikroli, Mumbai, admeasuring 627 sq.ft. carpet area and allotment letter was received on 22.01.2015. One stilt car parking and other amenities were promised by the Respondent. The amenities in the 4t schedule were common for all buildings including, 'Panorama', 'Vista', 'Bouleward' and 'Promonade' to be constructed at CTS No. 50, 50/1 to 50/7 and 50/35 to 50/44 at Vikroli on L.B.S. Marg. Total consideration agreed was Rs. 1,90,00,000/-. Stamp duty payable was Rs. 9,80,000/- The Complainant has paid Rs.1,80,50,000/- towards cost of the flat + stamp duty Rs. 9,78,275/- and interest at Rs. 15,87,181/-, total Rs. 2,06,15,456/-. It is alleged that Respondent took payment unilaterally without the knowledge of the Complainant. The name of entire project is "The Address". The Respondent advertised and marketed the buildings with possession

7-2-19

date as 31st March, 2017. The Respondent represented that he had clear and marketable title and all amenities will be provided by the said date. The project was under subvention scheme and Complainant had to pay EMIs or interest only after possession. Mails were received from the Respondent by the Complainant informing about it. The Respondent represented that it had entered into arrangement with L&T Housing Finance Service Ltd.

3. The Respondent delayed the payments of interest to the financier. The complaint shows Wadhvani Residency Pvt. Ltd. as Respondent No.1. The financier is referred as Respondent No.2. Also Executive Engineer, BMC is shown as Respondent No.3. It is alleged that Respondent No.2 changed the CIBIL score of Complainant showing him a defaulter. There is a big fraud and collusion between Respondent Nos.1 and 2 and Complainant has been cheated. As per the tripartite agreement, dated 28.01.2015, LTHFSL was to make disbursement in line with the construction of the project. The Complainant has learnt that club house shown at the time of booking is now for exclusive use of Boulevard. This fact was suppressed by Respondent at the time of booking. The society of Boulevard had filed a suit in the Bombay High Court for reliefs stated therein and refund of the advance maintenance amount.

3.2.19

4. The Respondent has failed to register agreement under MOFA or RERA. Under RERA Act, the Respondent has given date of possession as 31.12.2018 instead of original date of 31.03.2017. While registering the project under RERA, Respondent suppressed many essential facts including Suit No.534/2018 and Notice of Motion No. 853/2018 in the Bombay High Court. The Complainant came to know about it through right of information.
5. After the booking, the Respondent has applied for number of changes/amendment in the layout plan without consent of 2/3rd of flat purchasers in violation of Section 14 of the RERA. While booking the flats, Respondent had agreed to provide certain benefits, but they have not been mentioned in the draft sale agreement. As per the draft, promoter is allowed to project area without allottees' consent. The Respondent is adamant that purchasers sign the draft agreement as it is. Further it is stated that if the allottee does not sign agreement within 45 days including 15 days notice period, then the allotment is deemed to be cancelled and all the sum received from allottee will be returned without interest or compensation. Complainant wrote letter, dated 14.02.2018 to the Respondent bringing the facts to his notice.

2.19

6. The Complainant visited the flat with his architect/interior designer. The flat is said to have carpet area of 602.74 sq. ft. and as per RERA 623.67 sq. ft. There is a difference of 25 sq. ft. costing Rs. 9,04,987/-. The Respondent No.1 admitted the difference in the area. The Respondent has mortgaged the entire project and raised finance from various financial institutions. The present complaint therefore, came to be filed.
7. The matter came up before Hon'ble Chairperson on 4th July, 2018. As the parties showed willingness to settle the dispute, the matter was adjourned to 13th July, 2018. On that date, the complaint came to be transferred to the Adjudicating Officer. The matter came up before me on 10.10.2018 and came to be kept on 19.11.2018 for recording plea of Respondent and filing written explanation by Respondent. The Respondent filed written explanation on 19.11.2018. Plea of the Respondent was recorded. Both the Respondent Nos.2 and 3 have preferred to remain absent. Arguments were heard on 17.12.2018.
8. The Respondent No.1 has alleged that Complainant has filed false complaint. No agreement for sale has been executed in favour of the Complainant and therefore, complaint is not tenable. The Respondent has received

5-2-19

occupancy certificate in respect of the flat booked by the Complainant on 19th June, 2018. The Respondent is ready and willing to execute a registered agreement for sale. The Complainant availed loan facility of Rs. 1,40,00,000/- from L & T Housing Finance Ltd. by entering into a tripartite agreement, dated 28th Jan. 2015 with a understanding that Respondent shall pay Pre-EMIs only for a period of 24 months. The Respondent has paid the installments for said subvention period. While registering the project with the RERA Authority, the date of completion is given as 31.03.2017 and revised date as 31.12.2018. However, construction came to be completed and occupancy certificate dated 29th June, 2018 has been received. The Respondent on 14.01.2017 and thereafter on various occasions, requested the Complainant to execute agreement for sale by sharing copy of the agreement. The Complainant failed to execute and register the agreement. It is denied that the Respondent delayed payment of interest.

9. Initially it was agreed to hand over possession on 31.03.2017 as per terms and conditions of agreement for sale executed with all other purchasers of said building. The date of possession was revised to September, 2017. The Respondent was entitled to grace period of six months. Respondent No.1 obtained occupancy certificate on 19th June, 2018. Thus there is

5-2-19

delay of only 2½ months. The Complainant was called upon to execute and register agreement for sale time and again. The litigation is not in respect of building in which the flat is situated. The other allegations in the complaint are also denied.

10. On the basis of rival contentions, following points arise for my determination. I have noted my findings thereon for the reasons stated below.

POINTS

FINDINGS

- | | | |
|-----|---|---------------------|
| (1) | Has the Respondent failed to deliver possession of the flat to the Complainant as per agreement, without there being circumstances beyond his control ? | In the Affirmative |
| (2) | Has the Respondent made incorrect statements and representations inducing the complainant to book the flat? | In the Affirmative. |
| (3) | Has the Respondent made changes in sanctioned plans/project specifications without consent of the Complainant? | In the Negative. |
| (4) | Is the Complainant entitled to the reliefs claimed ? | In the Affirmative |
| (5) | What order ? | As per final order. |

7-2-19

REASONS

11. **POINT No. 1** :- There is no dispute about booking of the Flat No. P3-1906 with one car parking for a consideration of Rs. 1,90,00,000/-. Copy of booking form is placed on record by Complainant. Complainant Ketan with his wife Archana had booked the flat. Terms and conditions have been annexed to the booking form, which is dated 10.10.2014. Receipt for cheque for Rs. 4,95,000/-, dated 14.10.2014 has been acknowledged. Allotment letter, dated 22.01.2015 is also placed by the Complainant on record. The balance amount to be paid is shown as Rs. 1,14,00,000/-.

12. Shri Gala, the learned counsel for the Complainant drew my attention to the brochure at page 29 in respect of Promenade – The Address Phase II. Existing towers in Phase I are shown as 8 towers. New launch was shown as 4 towers. Configuration as 2 BHK, each with 627 sq. Ft. carpet area. Possession Date was shown as March, 2017. Club House and amenities for Promenade said to be ready by October, 2015. It is said to be – 20:80 Scheme. Shri Gala also drew my attention towards emails from page 30 to 32. He also drew attention to draft agreement at page 51. Shri Gaonkar, the learned counsel for the Respondent has vehemently submitted that possession date as March, 2017 was never admitted and in fact no agreement was

2-2-19

executed. As per RERA record, possession date is 31st December, 2018. Occupancy Certificate has been received In June, 2018.

13. There is no dispute that a registered agreement has not been executed. The Complainant must have approached the Respondent for booking the flat on the basis of advertisement. The Complainant has placed on record copy of the brochure, which was showing possession date as March, 2017. Both the parties are blaming each other for non execution of registered agreement for sale. Merely for the lack of registered agreement, the case of the Complainant cannot be thrown out. Whereas booking was made by paying booking amount on 10.10.2014, tripartite agreement was executed on 28.01.2015 under subvention scheme. Loan of Rs. 1,40,00,000/- was sanctioned by L&T Housing Finance Ltd. to the Complainant. The loan amount is also said to be disbursed. The Respondent is said to have paid the instalments as per agreement. What is clear is that the agreement between the parties was acted upon.

14. The only defence put by Respondent for not delivering possession by March, 2017 is that no formal agreement for sale has been executed between the parties. The Respondent revised the date of possession to 31st December, 2018, which is clear from RERA record. This

3-2-19

is done by the Respondent unilaterally without the consent of the Complainant and therefore, not binding on the Complainant. The Respondent is claiming that he had insisted upon the Complainant to execute agreement for sale. In fact, it was for the Respondent to execute agreement for sale. What the Complainant was supposed to do, was to arrange for stamp duty and registration charges. The grievance of the Complainant is that the terms in the draft agreement were not agreeable and not as per law. No doubt, there is letter, dated 19th Sept. 2017 asking the Complainant to be ready with stamp duty and registration charges within 10 days. There is another letter, dated 13.01.2018, third letter, dated 04.02.2018, fourth letter, dated 11.05.2018 on the similar lines. The Complainant has placed on record copy of draft agreement and declaration-cum-indemnity at Ex. G-1 and G-2. Clause 16 of the agreement is showing the date of possession as 31.12.2018. Since the date was unilaterally extended by the Respondent, the Complainant was justified in not honouring the direction of the Respondent. I therefore, hold that the Respondent failed to deliver possession as per original agreed terms and without there being circumstances beyond his control. I therefore, answer Point No.1 in affirmative.

15. **Point No.2** :- The Respondent is not denying distribution of the brochure, which is clearly showing

3-2-19

that possession will be given on March, 2017. Also carpet area of all 2 BHK Flats is shown as 625 sq. Ft. The Complainant has alleged that he relied upon the representation that carpet area of the flat will be 625 sq. ft. Also that the Respondent had clear and marketable title, also that club house will be in the use of all the towers. It was found out that there was a case in the Bombay High Court, also that club house was for the exclusive use of Boulevard tower. It is the contention of the Respondent that the property involved in the suit has got nothing to do with the flat being purchased by the Complainant. Neither of the parties has placed the copy of the proceedings to decide whether the proceeding was having concern with the flat being purchased by the Complainant. Also the brochure produced by the Complainant is not in one part. Exhibit A-3 is said to be a master plan, to which sketch is annexed. Yellow colour is shown as club house. There is mention of all the towers Boulevard, Panorama, Vista and Promenade on page 1. The details of the buildings are written by hand on the sketch. Exhibit B-1 which is a brochure for Promenade, it is showing that it has a club house and all amenities. The contention of the Complainant that he is being deprived of the use of club house is not challenged by the Respondent. I therefore, hold that on ^{the} account of date of delivery of possession as well as use of the club

✓
7-2-19

house, the Respondent has made false representation. I therefore, answer Point No.2 in the affirmative.

16. **Point No.3** :- As stated earlier, the booking form and allotment letter and the brochure are showing carpet area of each 2 BHK flat as 627 sq. ft. It is the grievance of the Complainant that the Respondent has reduced the carpet area by 25 sq. ft. worth Rs. 9,03,487/-. The Complainant found the area to be 602.72 sq. ft. when he visited the flat. The draft agreement is showing the area to be 60.28 sq. mtrs. The Complainant did not adduce evidence in respect of his measurement. The difference appears to be on account of area shown in square feet and in square meters. Consequently, the Complainant fails to prove that the Respondent has changed area of the flat or has changed the sanctioned plan. I therefore, answer Point No.3 in the negative.
17. **Point No.4** :- I have found that the Respondent committed breach of obligations under Section 12 and 18 of the Real Estate (Regulation & Development) Act, 2016. The Complainant is therefore, entitled to withdraw from the project and for refund of the amount paid to the Respondent, as well as with interest. This is also a fit case to saddle the Respondent with reasonable amount of compensation. The prayer of the Complainant is for refund of entire amount to him. The Complainant claims to have paid Rs. 1,80,50,000/-

7-2-19

towards cost of flat and Rs. 9,78,275/- as stamp duty and registration charges. The Complainant claims that he has paid Rs. 15,87,181/- as interest and thus he has in all paid Rs. 2,06,15,456/-. The rate at which interest was paid, is not mentioned in the complaint. The tripartite agreement shows that the scheme was to apply for a period of 24 months, loan of Rs. 1,40,00,000/- was to be disbursed. Rate of interest is not mentioned in it. The Complainant is claiming interest @ 10.05% p.a. The Complainant is entitled to claim interest @ 10.70% p.a. i.e. 2% above S.B.I.'s MCLR on the actual amount paid by him and not interest upon interest amount i.e. only on Rs. 1,90,28,275/-, subject to repaying the loan of Respondent No.2. I therefore, Point No.4 in the affirmative and proceed to pass following order.

ORDER

- (1) The Complainant is allowed to withdraw from the project.
- (2) The Respondent No.1 to repay Rs. 1,90,28,275/- to the complainant together with interest @ 10.70% p.a. from the date of payments till final realization subject to Complainant repaying loan.
- (3) The Respondent No.1 to pay Rs. 2,00,000/- as compensation to the Complainant.

W-2

- (4) The Respondent No.1 to pay Rs.20,000/- to the Complainant as costs of this complaint.
- (5) The Respondent No.1 to pay the aforesaid amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Dated :- 07/02/2019

MVK
7.2.2019
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA