

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000001634

Mr.Kutbuddin Hussseinbhai Lokhandwala ... Complainant.

Versus

Reliance Enterprises. Respondents.
(Hill View)

MahaRERA Regn: P51800005482

Coram:
Hon'ble Shri B.D. KAPADNIS.

Appearance:
Complainant: Adv. Aditya Deoleker.
Respondents: Adv. Divya M. Chopra

Final Order.
4th April 2018.

Pleadings of complainant.

The complainant has filed this complaint u/s. 18 of Real Estate Regulation and Development, Act 2016 (RERA). He contends that he and his wife Mrs. Maria booked Apartment No. 803, B-Wing of Respondent's Hill View project situated at Chembur for Rs.1,12,00,000/-. This apartment is in the sale component of the Respondents' SRA project. The complainant contends that he has paid the entire amount of consideration. The respondents agreed to deliver



the possession of the flat by December 2015. The Agreement for Sale to this effect has been executed on 31.01.2015. The respondents have failed to deliver the possession of the flat by December 2015 and stopped the construction from April, 2016. The complainant wants to withdraw from the project and claims his amount with interest and compensation.

Defence of respondents.

2. The respondents have filed reply to contend that the complainant was aware of the fact that the project was being developed under SRA scheme and therefore the possession of his flat was likely to be delayed beyond the agreed date of possession December 2015. Not only that, this was the tentative date depending upon the availability of the building materials and the possession was likely to be delayed because of the Govt. Rules, orders, regulations, etc. They admit that they have not handed over the possession of the flat to the complainant by the end of December 2015 because the letter of intent required them to seek various permissions and approvals mentioned in it. The main reasons which delayed the project are;

1. Acquisition of CTS No.148, the adjoining plot. One of the conditions is to acquire this private plot and to include it in the scheme. Its owner was not traceable and therefore the acquisition proceedings was started by SRA on 30.03.2015. But thereafter the



said authority did not follow it up and the plot is not yet acquired. Hence, FSI of the same plot has not been granted to the respondents.

2. D.P. Road setback by MCGM- as per the condition laid down by LOI, the respondents' Architects applied to MCGM on 25.11.2013 to get D.P. Road setback land demarcated from A.E. (Survey/D.P./TNC/Dept. of MCGM) and to hand it over free of cost and free of encumbrances to MCGM for obtaining CC for the last 25% of sale built up area. However, they did not get any response from 25.11.2013.
3. NOC for 60 mtrs. Wide Anik Bandra Pinjrapole road. In this context to meet the requirement of L.O.I. they applied on 28.12.2009, however, on 23.4.2010 they received a letter from MMRDA to rehabilitate a mosque. On 20.4.2012 they explained their inability to accommodate the said mosque in SRA scheme and that issue was pending till 13.10.2016 when they filed revised application for NOC.
4. High Rise NOC : They applied for High Rise NOC on 10.03.2013. The concerned authority issued it on 19.04.2017.
5. Revised LOI letter dated 7.6.17 - The application for revised LOI has been submitted on 7.6.17 and it is pending. Therefore, they contend that the project is delayed.



3. The respondents have contended that the complainant and his wife are investors and they did not intend to purchase flats. The complainant expected to get 20% more than his investment and when he felt that he is not going to gain the expected appreciation in value, he has filed this complaint. Therefore, he is not entitled to get the refund of his amount especially when the project is nearing its completion.
4. The following points arise for determination. I record my findings thereon as under: -

POINTS.	FINDINGS.
1. Whether the respondents failed to deliver the possession of the flat on agreed date?	Affirmative.
2. Whether the respondents have been prevented by the causes beyond their control from completing their project in time?	Negative.
3. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

Reasons:

Legal Provision. -

5. Section 18 of RERA provides that when the promoter fails to complete or is unable to give possession of apartment in accordance with the terms of



the agreement for sale or duly completed by the date specified therein, he shall be liable, on demand to the allottees in case allottee wishes to withdraw from the project, to return the amount received by him with interest at prescribed rate and compensation also.

6. The rules framed under the Act have prescribed the rate of interest. It is 2% above the State Bank of India's highest marginal cost of lending rate. It is currently 8.05%. Hence, the allottee is entitled to get the interest @ 10.05%.

Delayed Possession:

7. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flat to the complainant by the end of December 2015 but they have not delivered it till the date of complain. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

Reasons for Delay:

8. The learned Advocate of respondents submits that the respondents were required to take several permissions and approvals from various authorities mentioned in the letter of intent dated 19.10.2011. He has pointed out the reasons of delay, viz. acquisition of plot bearing CTS No.148; D.P. Road setback issue; rehabilitation of the mosque; the delay caused by the authorities in granting high rise NOC and revised letter of intent dated 7.6.17 which are



referred to above. According to him, these causes were beyond the control of the promoter and therefore they could not complete the project in time.

9. At this stage it is necessary to keep in mind that Maharashtra Ownership of Flat Act, 1963 is in force and Section 88 of RERA permits its application. The agreement for sale has been executed in accordance with the provisions of Maharashtra Ownership of Flat Act. Section 8 of the said Act provides remedy of refund of the allottees' amount on promoter's failure to give possession in time. Its clause (b) provides that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified and a period of 3 months thereafter or a further period of 3 months, if the reasons still exist, then promoter shall be liable on demand to refund the amount already received by him with simple interest @ 9% p.a. from the date he received the same till they are refunded.

10. In view of this provision, I find that even if it is proved by the complainants that they were prevented by the causes which were beyond their control to complete the project in time, they are entitled to get the extension of 6 months at the most and not more than that. **In Neelkamal Realtors Pvt. Ltd. Versus Union of India Writ Petition No.2737 of 2017**, Hon'ble Bombay High Court in its Ordinary Original Civil Jurisdiction has held that the promoter having sufficient experience in open market, is expected to have a fair assessment of time required for completing the project. So when the promoter

offers any flat for sale and specifies the date of possession, he has to assess all the difficulties which he is likely to face in completing the project. Once he specifies the date to deliver the possession, he is bound by it. However, in order to attract the customers, promoter specifies the earlier date though he knows that he would not complete the construction on the date so specified. This is nothing but the dishonesty of the promoter and he indulges in such unfair practice in order to attract the customers for selling his product and to grab their money at the earliest opportunity. Here, in this case the respondents have mentioned that since beginning of the launch of the project they were aware of the fact that various NOCs, permissions and approvals were required and the problems they were likely to face. Despite these facts, they have executed agreement for sale with the complainant on 31.01. 2015 and promised to deliver the possession by end of December 2015. Full consideration has already been collected by the respondents, therefore I find it difficult to hold that respondents have been prevented by the causes which were beyond their control, to complete the project in time. The pleadings of the respondents further demonstrate that they have not acted vigilantly to pursue the matter with the authorities. They cannot take advantage on their own wrongs and reasons assigned by them.



Entitlement of the Complainant.

11. The complainant has filed the statement of his claim market exhibit- A to show the payment made by him to the respondents. It shows that the complainant paid Rs. 5,00,000/- in 31st December 2014 at the time of booking. He paid Rs. 85,00,000/- on 08.01.2015 and Rs. 22,10,000/- on 31.01.2015 towards consideration of the flat. He paid Rs. 5,60,500/- towards stamp duty in his name and Rs. 33,800/- towards registration charges on 16.01.2015. He paid Rs. 5,24,191/- towards service tax and VAT on 10.01.2015. These payments have not been disputed by respondents.

12. The complainant is entitled to get refund of the amount paid by him to the respondents and except the amount of stamp duty, the amount of registration charges and taxes spent by him because respondents have failed to deliver the possession of the flat on agreed date. Respondents have defaulted in keeping their promise and hence they must shoulder liability of repayment. In addition to the above amount, the complainants are entitled to get Rs. 20,000/- towards the cost of the complaint.

13. The complainant is entitled to get simple interest @10.05% p.a. on his amount paid to the respondents as well as on the additional expenses incurred by him from the respective dates of payment.


Hence, the order.



ORDER

1. The respondents shall refund the amount mentioned in Para 11 & 12 of this order with simple interest @ 10.05% p.a. from the respective dates of their payments till they are refunded to the complainant.
2. The charge of aforesaid amount shall be on the flat booked by the complainant till they are refunded.
3. On the satisfaction of their claim, the complainant and his wife Maria shall execute the deed of cancellation of agreement for sale in respondents' favour at respondents' cost.

Mumbai
Date: 04.04.2018.


(B.D. Kapadnis)
(Member & Adjudicating Officer)
MahaRERA, Mumbai